

postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing in whole said Order of the Board, and requiring Respondent, its officers, agents, successors and assigns, to comply therewith.

A. NORMAN SOMERS,
Assistant General Counsel,
National Labor Relations
Board.

Dated at Washington, D. C., this 8th day of September, 1954.

Filed September 18, 1954.

Answer of Respondent.

To the Honorable, the Judges of the United States Court of Appeals for the Tenth Circuit:

Seamprufe, Inc., hereinafter referred to as "Respondent," in answer to the petition filed herein respectfully states and would show that:

1.

Respondent admits that this Honorable Court has jurisdiction of the aforesaid petition, but it denies that it has

committed any unfair labor practice in this or in any other judicial circuit.

2.

Respondent admits that the National Labor Relations Board, hereinafter called the Board, issued an order directed to it on or about July 7, 1954, and that said order was served upon it in a case styled "In the Matter of Seamprufe, Inc. (Holdenville Plant) and International Ladies' Garment Workers Union, AFL," Case No. 16-CA-677. Respondent does not admit, but denies that said order was issued upon due proceedings and that the Board duly stated its findings of fact.

3.

The order of the Board in Case No. 16-CA-677

(a) Is not supported by the record;

(b) Is contrary to the record;

(c) Is contrary to law;

(d) Is based and dependent for its support on the decision in said case which does not contain findings of fact in respect to relevant and material matters that are necessary to a proper and lawful decision and that are established by competent and undisputed evidence and testimony as is more particularly set forth in Respondent's Exceptions to the Intermediate Report in said case;

(e) Is based and dependent for its support on the Decision in said case which does not take into account or give effect to relevant and material facts that are established by competent and undisputed evidence and testimony and that are necessary to the proper and lawful determination of the issues involved therein which facts are set out in Respondent's Exceptions to the Intermediate Report filed therein;

(f) Is unreasonable, arbitrary and capricious;

(g) Is based and dependent for its support upon the Intermediate Report of the Trial Examiner in said case which does not contain findings of fact to support the conclusion therein expressed as required by law as is more particularly set forth in Respondent's Exceptions to said report.

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 251

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

SEAMPRUFE, INC. (HOLDENVILLE PLANT)

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 21, 1955

CERTIORARI GRANTED OCTOBER 10, 1955

United States Court of Appeals

TENTH CIRCUIT

No. 4996

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

VS.

SEAMPRUFE, INC. (Holdenville Plant), RESPONDENT.

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD.

FILED OCTOBER 16, 1954.

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(I)

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 4996

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

VS.

SEAMPRUFE, INC. (Holdenville Plant), RESPONDENT.

Petition for Enforcement of an Order of
The National Labor Relations Board.

To the Honorable, the Judges of the United States Court
of Appeals for the Tenth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Seamprufe, Inc. (Holdenville plant), Holdenville, Oklahoma, its officers, agents, successors and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Seamprufe, Inc. (Holdenville Plant) and International Ladies' Garment Workers Union, AFL." Case No. 16-CA-677.

In support of this petition the Board respectfully shows:

(1) Respondent is a New York corporation engaged in business in the State of Oklahoma, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on July 7, 1954, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof

The Board erred in not sustaining and giving effect to each of Respondent's Exceptions to said Intermediate Report.

Wherefore, Respondent prays this Honorable Court that it review the order sought to be enforced herein and the record upon which it is predicated and upon such review that said order be set aside and enforcement thereof be denied.

SEAMPRUFE, INC.,

By HAROLD E. MUELLER,

Its Attorney.

S. LESTER BLOCK,

PROSKAUER, ROSE, GOETZ & MENDELSON,

HAROLD E. MUELLER,

KARL H. MUELLER,

Attorneys for Respondent.

Filed October 8, 1954.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Sixteenth Region

In the Matter of Seamprufe, Inc. (Holdenville Plant), and
International Ladies' Garment Workers' Union, AFL. Case
No. 16-CA-677.

Charge Against Employer.

General Counsel's Exhibit 1-A

Date Filed 9-17-53

Compliance Status Checked By: MS.

1. Employer Against Whom Charge is Brought.

Name of Employer: Seamprufe, Incorporated.

Address of Establishment (Street and number, city, zone,
and State): Holdenville, Oklahoma.

Number of Workers Employed: Approx. 300.

Nature of Employer's Business: Manufacturing lingerie.

The above-named employer has engaged in and is engaging
in unfair labor practices within the meaning of section 8
(a), subsections (1) of the National Labor Relations Act,
and these unfair labor practices are unfair labor practices
affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names,
addresses, plants involved, dates, places, etc.): On or about
July 23, 1953 and at all times since that date, employer,
by its officers, agents and employees, has refused to permit
distribution of literature by representatives of the Interna-
tional Ladies' Garment Workers' Union at or near the en-
trance to its Holdenville factory, adjacent to or near a road
and a parking lot, and has refused to permit such representa-
tives, or any union representatives, to enter upon any por-
tion of a tract approximately twenty acres in size on which
said factory is located. By such acts and conduct; and by
other acts and conduct, employer has interfered with, re-

strained, and coerced its employees, in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: International Ladies' Garment Workers' Union, AFL.

4. Address (Street and number, city, zone, and State): 1710 Broadway, New York, New York. Telephone No. Columbus 5-7000.

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization):

6. Address of National or International, if any (Street and number, city, zone, and State): Please notify: Mullinax & Wells, 1716 Jackson Street, Dallas, Texas. Telephone No. Riverside 9051.

7. Declaration.

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

INTERNATIONAL LADIES' GARMENT WORKERS'
UNION,

By MULLINAX & WELLS,

Per CHARLES J. MORRIS, Attorney.

September 16, 1953.

Complaint.

General Counsel's Exhibit 1-D.

It having been charged by International Ladies' Garment Workers' Union, AFL, 1710 Broadway, New York, New York, under date of September 17, 1953, that Seamprufe, Inc., Holdenville, Oklahoma, hereinafter referred to as Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 61 Stat. 161, hereinafter referred to as the Act, the General Counsel for the National Labor Relations Board, hereinafter re-

ferred to as the Board, by the Regional Director for the Sixteenth Region of the Board, hereby alleges as follows:

1. Respondent is and has been since December 20, 1946, a corporation duly organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business at 148 Madison Avenue in the City of New York, New York, with a manufacturing plant located at Holdenville, Oklahoma, the facility herein involved and hereinafter referred to as the "Holdenville Plant," where it is engaged in the manufacture of ladies' lingerie and related products.

2. Respondent in the course and conduct of its business operations at its "Holdenville Plant," during the twelve-month period ending November 30, 1953, which period is representative of all times material hereto, purchased raw materials, consisting principally of piece goods valued in excess of \$200,000.00, of which more than ninety per cent was shipped in interstate commerce to the "Holdenville Plant," from points outside the State of Oklahoma. During the same period, Respondent sold products consisting principally of lingerie, valued in excess of \$250,000.00, of which more than ninety per cent was shipped in interstate commerce from its "Holdenville Plant," to points outside the State of Oklahoma.

3. Copy of the charge hereinabove referred to was served on Respondent by registered mail on September 18, 1953.

4. International Ladies' Garment Workers' Union, AFL, hereinafter referred to as the Union, is a labor organization within the meaning of Section 2, subsection (5), of the Act.

5. From on or about March 17, 1953, until the present time, Respondent by and through Robert Nichols, its Plant Manager, maintained, publicized and enforced and is now maintaining, publicizing and enforcing plant rules, which inter alia prohibit the distribution of Union literature by union officials in and around Respondent's parking lot and on or about Respondent's sidewalk lying between Respondent's parking lot and the Employees' entrance of the "Holdenville Plant."

6. From on or about March 17, 1953, until the present

time, Respondent by and through Robert Nichols, its plant manager, maintained, publicized and enforced and is now maintaining, publicizing and enforcing plant rules which inter alia prohibit solicitation of Union memberships and/or authorizations by union officials in and around Respondent's parking lot and on or about Respondent's sidewalk lying between Respondent's parking lot and the Employees' entrance of the "Holdenville Plant."

7. On or about August 27, September 25 and September 30, 1953, Respondent, by and through Robert Nichols, its plant manager, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

8. On or about July 2, July 23 and August 27, 1953, Respondent, by and through Earl Dean, its watchman, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

9. On or about July 2, 1953, Respondent, by and through Velma Buirman, its supervisor, attempted to prevent Union officials from distributing Union literature and/or soliciting Union memberships and/or authorizations in and around Respondent's parking lot and on and about Respondent's sidewalk lying between Respondent's parking lot and the employees' entrance of the Holdenville Plant.

10. On or about July 23, 1953, and August 27, 1953, Respondent, by and through Robert Nichols, its plant manager, and Earl Dean, its watchman, caused the arrest of Union officials who were distributing Union literature in and around Respondent's parking lot and on and about Respondent's sidewalk, lying between Respondent's parking lot and the Employees' entrance of the Respondent's plant.

11. By the acts described above in paragraphs 5, 6, 7, 8, 9 and 10, and by each of said acts, Respondent did in-

interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8 (a), Subsection (1), of the Act.

12. The activities of Respondent, described above in paragraphs 5, 6, 7, 8, 9 and 10, occurring in connection with the operations of Respondent, described above in paragraphs 1 and 2 have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

13. The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of section 8 (a), subsection (1), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board has caused this complaint to be signed and issued by the Regional Director for the Sixteenth Region, on the 31st day of December, 1953, against Seamprufe, Inc., Respondent herein.

EDWIN A. ELLIOTT,
Regional Director,
National Labor Relations Board,
Sixteenth Region.

(Seal)

Respondent's Answer:
General Counsel's Exhibit 1-F

Now Comes Seamprufe, Inc., Respondent in the above entitled and numbered proceeding, and in answer to the complaint herein dated the 31st day of December, 1953, states:

1.

Respondent admits the allegations set forth in Paragraphs numbered 1, 2, 3, and 4 of said Complaint.

2.

Respondent denies the allegations set forth and contained in Paragraphs numbered 5, 6, 7, 8, 9, 10, 11, 12, and 13 of said Complaint.

Wherefore, Respondent prays that said Complaint be dismissed and that it go forth without day.

SEAMPRUFE, INC.,

By HAROLD E. MUELLER,

Attorney,

National Labor Relations Board.

[Verified.]

Intermediate Report and Recommended Order.

Statement of the Case.

This proceeding, brought under Section 10 (b) of the National Labor Relations Act, as amended (61 Stat. 136), herein called the Act, was heard pursuant to due notice at Holdenville, Oklahoma, before Henry S. Sahm, the undersigned Trial Examiner. The complaint issued on December 31, 1953, by the General Counsel of the National Labor Relations Board, and based on charges duly filed and served, alleges that the enforcement by Seamprufe, Inc., herein after called both Respondent and the Company, of a rule which, among other things prohibits distribution of union literature and solicitation of union membership by representatives of the International Ladies' Garment Workers' Union, AFL, herein called the Union, in and around Respondent's parking lot of the Holdenville Plant constitutes a violation of Section 8 (a) (1) of the Act. Respondent filed an answer admitting the jurisdictional allegations of the complaint but denied that it had committed any of the unfair labor practices alleged in the complaint.¹

All parties were represented at the hearing by counsel and were afforded full opportunity to be heard, to examine, and cross-examine witnesses, to introduce relevant evidence,

¹No issue was presented or tried with respect to the exclusion of union representatives from Respondent's property on a discriminatory basis.

to argue orally, and to file briefs and proposed findings of fact and conclusions of law. The Respondent offered no testimony. Briefs have been filed by the General Counsel and the Respondent.²

Upon the entire record in the case, and from his observation of the demeanor of the witnesses, the Trial Examiner makes the following:

I. Findings of Fact.

It is conceded and found that the Union is a labor organization within the meaning of Section 2 (5) of the Act. It is conceded also that the Respondent employs approximately 200 employees at its Holdenville, Oklahoma, plant where it is engaged in the manufacture, sale, and distribution of lingerie. During the year 1953, Respondent purchased raw materials exceeding \$200,000 in value, of which more than 90 per cent was shipped in interstate commerce to its Holdenville plant from points outside the State of Oklahoma. During the same period, Respondent sold products valued in excess of \$250,000, of which more than 90 per cent was shipped in interstate commerce from its Holdenville plant to points outside the State of Oklahoma. Respondent admits, and it is found that the Respondent is engaged in commerce within the meaning of the Act.

A. The Issue.

The only issue in this case is the asserted right of a union which does not represent the employees in a plant, to distribute union literature, outside of working hours, not in the functional part of the plant itself but solely on and about an adjacent parking lot maintained for the employees. What makes this novel is the fact that the union solicitors are not employees of the Respondent. Nor is there any evidence that any of the Respondent's employees were members of the charging union. The Respondent contends that there is a distinction between a situation in which prohibition of union activities on an employer's premises is directed against employees, and a situation in which it is directed against union representatives, who are not em-

²The record does not show General Counsel's Exhibit No. 4 was received in evidence. It is hereby admitted.

ployees and have no right to be on the employer's premises by virtue of their employment.³

II. The alleged unfair labor practices.

A. The Facts.

Respondent's plant is built on a 25-acre tract of land located on the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 people. It operates on a one-shift basis and employs approximately 200 employees of which two-thirds reside in Holdenville, the remaining one-third residing in communities within five to ten miles around Holdenville, with a few of the employees living as far as thirty miles from the plant. The employees, none of whom appear to be represented by any union for purposes of collective bargaining, ride to work in privately owned automobiles either singly or in groups.

The plant property is bounded on the East by a public road, which runs along the front of the property. The building that houses the factory, cafeteria and offices faces in an Easterly direction. This East side of the property is bounded by a fence. Access to the front entrance to the building is from the public roadway along the East side of the property. The property is bounded on the South by a public thoroughfare called the Airport Road. Access to the rear or West entrance, which is normally used by production workers (as distinguished from officials and office personnel who use the East or front entrance) is from a private road on the West side of the Respondent's property. This private road⁴ runs in a Northerly direction from the public road (hereinafter referred to the Airport Road); on the South side of the property and West of Respondent's building to a point Northwest of the plant building where it turns East and continues to and joins the public road near the Northeast corner of the property.

³A facet of this situation is where employees both work and live on company property. In such cases, a certified union representative is allowed to enter upon the premises for the purposes of engaging in proper union activities.

N.L.R.B. v. Stowe Spinning Co., 336 U. S. 226.

N.L.R.B. v. Lake Superior Lumber Corp., 167 F. 2d 147 (C. A. 6).

N.L.R.B. v. Cities Service Oil Co., 122 F. 2d 149.

⁴This private road, which is graveled, is entirely on Respondent's property.

The employee's parking lot is situated on Respondent's property adjacent to the private road directly behind and West of the Respondent's plant. The parking lot and sidewalk referred to hereinafter as the situs of where the union representatives distributed their literature are on Respondent's property and are some distance North of the Airport Road which runs along the South side of the property.

Employees coming to work drive in a Westerly direction along the Airport Road on the South side of the property, turn right into the private road on the West side, proceed North and then park their cars in the parking area adjacent to the rear or West entrance of the plant. After their automobiles are parked, the employees walk East from the parking lot across the private road on to a sidewalk and enter the plant.⁵ On leaving the plant at 4:30 p.m., the employees leave the parking area by driving North on the private road to a point where this road turns East and then proceed on this private road along the North side of the plant premises to where the private road intersects the public road running along the East side of Respondent's property.⁶ The automobiles then proceed in a Southerly direction on this public road to where it intersects the Airport Road at the Southeast corner of the plant property at which point they turn left in an Easterly direction toward the center of Holdenville.

Traffic on the public roads adjoining the plant is light because the plant is located in a rural or semirural area. As automobiles approach the plant in the morning when the employees report for work, they normally do not stop at any point in the vicinity of the plant until they park their cars on the Respondent's lot. When leaving at 4:30 p.m., the automobiles normally do not stop from the time they leave the parking lot until they leave the vicinity of the plant area. It was testified that about 4:30 p.m., on January 29, 1954, 80 cars containing 225 employees, left the

⁵The union representatives distributed literature to the employees on the parking lot and in the vicinity of where the sidewalk adjoins the private road.

⁶Signs posted on the property direct all traffic on the private road to proceed in one direction; namely, North from the Airport Road and then East where the private road runs along the North side of the plant property.

plant's parking lot, driving at maximum distance from each other of approximately one car-length and at speeds varying from five to twenty miles per hour. From the time they began to leave the parking lot, in this caravan fashion, until all eighty cars left the vicinity of the plant consumed approximately ten minutes and they did not stop anywhere in the vicinity of the plant area. The record warrants the finding that this nonstop method of driving to and from the plant area is the normal manner in which the employees invariably arrived at the plant area in the morning and departed in the evening. It is found, therefore, that the difficulty of reaching prospective union members and distributing union literature to employees off of Respondent's property is virtually impossible because of the special circumstances above described.

Sometime subsequent to July 2, 1953, and prior to January 29, 1954, Respondent posted "No Trespassing" signs at the Southeast corner of its property and near the points at which the private road intersects with the public roads on the South and East sides of the property. There are also "Private Road" signs at the latter two points which also were posted on Respondent's premises sometime between July 2, 1953, and January 29, 1954.

As stated above, the sole issue in this case is the Union's asserted right to use the parking lot and the adjoining sidewalk outside the West or rear entrance of the factory building to distribute union literature and solicit union memberships.

Sona Williams, a representative of the charging union, drove to Respondent's property on three occasions in the fall of 1952, and again on March 5, 1953. On these four occasions, she parked her car on Respondent's lot, walked a short distance to a point approximately where the private road on the West side of the plant intersects the parking area and the sidewalk leading to the employees' entrance and then proceeded to distribute union literature to Respondent's employees who were reporting for work.

On the last occasion, March 5, 1953, and while accompanied by Irving Krantz, another union representative, the manager of Respondent's plant, Robert Nichols, came out

of the factory, and told them, "You are trespassing on company property and you must leave now." After some further conversation, Nichols continued, "You heard what I said, leave now." Krantz then replied that he did not know they were on company property and that he would check and see if this were so, whereupon Nichols replied, "Are you going now or shall I call the cops?" Whereupon, Williams and Krantz departed reluctantly.

Georgia Sukenis, also a representative of the charging union, first went upon the Respondent's property in February of 1953,⁷ at which time she stationed herself in the vicinity of the parking lot, at a point near the sidewalk, equidistant from the parking lot and the employees' entrance. At that time and place she handed employees union literature as they left their parked cars and proceeded to enter the plant. The next time she stationed herself at the place described above was on May 27, 1953. On that occasion she did not distribute union literature but merely greeted the employees as they entered Respondent's plant.

She returned to the plant on July 2, 1953, parked her car in the parking area and distributed union literature to the employees as they left their parked automobiles and walked toward the employees' entrance. As she was distributing this literature, Earl Dean, the plant watchman, approached her and said: "I'm sorry but the company doesn't allow no leaflets to be handed out and you have to leave here." Sukenis agreed to leave and did so.

On July 23, 1953, Sukenis, accompanied by Union Representative Krantz, returned to Respondent's property. As

⁷The charge in this case was filed on September 17, 1953. Therefore, the proceedings herein, insofar as considering alleged unfair labor practices, are limited to such alleged practices occurring on and after March 17, 1953. Section 10 (b) of the Act. The Respondent contended at the hearing that evidence relating to events occurring prior to March 17, 1953, was inadmissible. Respondent's objection was overruled on the ground that such evidence would be received and considered only as background. "To the extent that the Respondent's activity in connection with the committee occurred more than 6 months before the filing and service of the original charge, Section 10 (b) of the Act prevents such activity from being utilized as a basis for an unfair labor practice finding. However, such conduct may be, and has been, considered as background evidence to assist us in evaluating the Respondent's conduct which occurred after the 6-month period." *McCann Steel Co.*, 105 NLRB No. 30, footnote 10. See also *NLRB v. Sharples Chemicals Co.*, 33 LRRM 2438, 2444 (C. A. 6).

they parked their car on the Airport Road, and while walking to the same situs described above for the purpose of distributing union literature to those employees who were entering the plant, they noticed a police car stationed at the East or main entrance of the plant which leads to the executive offices of Respondent. After they had handed two pamphlets to employees, a policeman of the Holdenville Police Department, who had in the meantime driven the police car referred to above, around to the West or employees' entrance, apprehended Sukenis and Krantz and said, "Georgia, we have two warrants for your arrest." * * * You have violated Ordinance No. 413.'" Thereupon, Sukenis and Krantz were taken to the Holdenville police station.

After Sukenis and Krantz left the police station, they returned to the plant the same day, and again began to distribute union literature to the employees at a point near the employees' entrance.¹⁰ They were again arrested by a city policeman identified as Kyle, who said that he did not have warrants for them but "We are arresting you again. You have to go back." Sukenis testified that, "We went back [to the police station] and give them twenty dollars more apiece, cash."¹¹

"Sukenis' name was already on the warrant served on her but Krantz' name was inserted later on the warrant served upon him.

"This Ordinance, as herein pertinent, provides:

An ordinance defining trespass, providing the penalties therefor, and declaring an emergency:

Be it ordered by the Mayor and councilmen of the City of Holdenville, Oklahoma, in regular session assembled:

Section 1. Trespass, as used in this ordinance, shall include going upon, or occupying any public or private property or entrances thereto without the express or implied consent of the owner, lessee, or custodian.

Section 2. It shall be an offense for any person to trespass upon, or enter upon any public or private property, within the City of Holdenville, Oklahoma, against the wishes or consent of the owner, lessee, custodian, or the person rightfully in possession thereof. Conviction is punishable by a maximum fine of \$20.

Passed and approved, this, the 21st day of July, 1953.

¹⁰On all these occasions hereinbefore described, the literature was distributed on the Respondent's property.

¹¹The General Counsel moved for the admission into evidence of General Counsel's exhibit marked for identification No. 2 which is a copy of a transcript covering the trial of Sukenis and Krantz in the Municipal Court of the City of Holdenville on August 3, 1953. Respondent objected to the receipt in evidence of this exhibit and the Trial Examiner reserved ruling. This exhibit is hereby admitted

The next time Sukenis returned to Respondent's property was on August 27, 1953. At that time she merely greeted the employees as they entered the plant to go to work. She was not distributing union literature on this occasion but was again arrested by a Holdenville police officer and taken to the police station. When asked on direct examination if, after leaving the police station, she returned to the plant that same day she answered: "No, sir, I couldn't. They wouldn't let me."

The next time Sukenis was on Respondent's property was on October 1, 1953. She did not distribute any union literature at that time, but merely greeted the Respondent's employees as they entered the plant. While she was there, Nichols came out of the plant and said, "Here you are, Georgia. You are asking for trouble, and you are going to get it. Get the hell away from here." She waited "a while" and then left the Respondent's property.

She next drove to the plant on September 26, 1953, in the company of Althea Covey, another representative of the charging union. They parked their automobile on the Airport Road and proceeded to the same place on Respondent's property that the Union representatives had stationed themselves on the previous occasions described above. They had no union literature with them. Nichols, the plant manager, came out of the factory while they were standing in the vicinity of the employees' entrance and told them to leave the plant premises. They did not leave and, about ten minutes later, a Holdenville police officer who accosted them, said, "Well, I am not going to arrest you because you are not trespassing, but you have to . . ."

in evidence for the limited purpose of corroborating other testimony to the effect that Respondent prevented the union representatives from distributing their literature on its property. Nashville Corporation, 94 NLRB at 1568, 1569. Oklahoma provides expressly by a statute for the admission of the official reporter's certified transcript of notes of testimony "in all cases" with like effect as testimony taken by deposition. Comp. St. 1921, Sec. 3071, Stats. 1931, Sec. 3327; S. 1921, Sec. 7324, St. 1931, Sec. 13390; Young v. Travelers Insurance Co., D. C. N. D. Okl., 2 Fed. Supp. 624 (Okl. Comp. Stat. 1921, Sec. 3071, applied to admit a court reporter's certified transcript); St. 1951, May 7, Tit. 11, c. 18, Sec. 4 (Municipal and city courts; "Such reporter shall have power to certify all transcripts and records of evidence and proceedings taken before him"). Rule 43 (a), Rules of Civil Proc. for U. S. Dist. Cts.

Althea Covey, a Union representative, accompanied Sukeenis to the plant September 26, 1953; and on January 29, 1954, Covey went to the plant with Sona Williams, another Union representative. Her testimony corroborated Sukeenis and Williams insofar as it pertains to what they testified occurred on those dates.

Upon a study of the evidence on the record as a whole, and based upon the reliable, probative and substantial testimony taken in the case, it is concluded and found that:

1. Respondent prevented the Union representatives from distributing union literature and soliciting union memberships on Respondent's property during the employees' non-working time, not in the plant, but in and about the parking area;
2. Access to Respondent's employees, either upon arrival at, or departure from the plant, can only be effectively accomplished on the parking lot and the sidewalk leading to the employees' entrance;
3. It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property;¹²
4. Respondent enforced a rule forbidding the distribution of Union literature on its property; and
5. No showing was made that the Respondent's no-solicitation rule was necessary in order to maintain production or preserve discipline in the plant.

B. Contentions, analysis, and conclusions.

An employer may lawfully forbid union solicitation on his property if such prohibition is nondiscriminatorily promulgated in good faith and in order to maintain cleanliness or production or safety or discipline in the plant and not to interfere with the employees' rights of self-organization. In fact, this can be done in the functional part of the plant, even during the employees' nonworking time, in the interest

¹²In the United Aircraft Corp., 67 NLRB 594, 606, it was found that the employees did not stop their cars to receive literature, so that "distribution to these employees is virtually impossible."

of keeping the plant clean and orderly, at least where it is not evident that such activity cannot readily be conducted somewhere off the employer's premises.¹³

The fundamental problem involved in the present case consists of the adjustment of the undisputed right of a property owner, to govern the use of its own property, and the employees' undisputed rights of self-organization and collective bargaining.¹⁴ The rights of self-organization and collective bargaining guaranteed employees by the Act include the right "to receive aid, advice, and information from others, concerning these rights and their enjoyment."¹⁵ Correlatively, the Union has the right "to discuss with and inform the employees concerning matters involved in their choice." *Thomas v. Collins*, 323 U. S. 516, 534. In some circumstances, however, employees might find it virtually impossible to exercise these rights off the employer's premises. On the other hand, if the exercise of these rights were conducted on the employer's property, not on company time, it might, at most, be merely an inconvenience to the employer. Consequently, the Supreme Court has held that where it is necessary to balance this clash of interests between the employees' rights to self-organization and inconvenience to the employer's use of his property, the employees' privilege is weighed more heavily.¹⁶ Moreover, under the facts of this case, the rights accorded to employees by Section 7 of the Act cannot be curtailed by the Ordinance *supra*, which was enacted by the City of Holdenville. See *N.L.R.B. v. Hearst Publications*, 322 U. S. 111, 123, 124; *Automobile Workers v. O'Brien* 339 U. S. 454, 458, 459.

While a showing by the employer that "unusual circum-

¹³*N.L.R.B. v. Le Tourneau Co.*, 324 U. S. 793; *Monolith Portland Cement Co.*, 94 NLRB 1358; *Caldwell Furniture Co.*, 199 F. 2d 267 (C. A. 4), certiorari denied, 345 U. S. 907; *N.L.R.B. v. American Furnace Co.*, 158 F. 2d 376, 380 (C. A. 7); *N.L.R.B. v. Illinois Tool Works*, 153 F. 2d 811, 816 (C. A. 7). As to retail department stores, see *Eighteenth Annual Report of the National Labor Relations Board* at page 31.

¹⁴The primary purpose of the Act is to promote collective bargaining. *N.L.R.B. v. Sands Manufacturing Co.*, 306 U. S. 332.

¹⁵*Weyerhaeuser Timber Co.*, 31 NLRB 258, 264.

¹⁶*N.L.R.B. v. Le Tourneau Co.*, *supra*, footnote 8 at page 802. See *N.L.R.B. v. Cities Service Oil Co.*, *supra*, at page 152, where the Court held that in some circumstances property rights must yield "in order to safeguard the right to collective bargaining."

stances" pertaining to the operation of his particular plant might override the Union's right to distribute its literature on company property, no such evidence is present in this case.¹⁷ Respondent's contention (which is contrary to the finding made above) that since the Union has adequate means of communication with its employees outside of company property, the enforcement of its no-solicitation rule does not improperly restrict the employees' rights under Section 7 of the Act is answered by the Board's holding in the *Le Tourneau* case, which was approved by the Supreme Court, *supra*, that "It is no answer to suggest that other means of disseminating Union literature are not foreclosed." (54 NLRB-1253, 1261.) The Court of Appeals for the Second Circuit expressly followed this principle in *Bonwit Teller, Inc., v. N.L.R.B.*, 197 F. 2d 640, certiorari denied, 345 U. S. 905, wherein the Court said on page 645:

Normally, an employer cannot forbid union solicitation on company property during nonworking time even where there is no showing that solicitation away from the plant would be ineffective. *Republic Aviation Corp. v. N.L.R.B.*, 324 U. S. 793. This is so because the place of work has been recognized to be the most effective place for the communication of information and opinion concerning unionization.

Respondent contends, however, that the *Le Tourneau* case, *supra*, is not controlling because in that case employees were distributing union literature whereas here, nonemployee solicitors (Union representatives) are involved. A study of the legislative history of Section 8 (a) (1) and the cases interpreting solicitation of employees by a union on the employer's property have persuaded the Trial Examiner that this asserted distinction is one without a difference. To differentiate between employees soliciting on behalf of the Union and nonemployee union solicitors would be a differentiation not only without substance but in clear defiance of the rationale given by the Board and the Courts for permitting solicitation. This conclusion is based on the belief that the rationale enunciated by the Supreme Court in the *Le Tourneau* case, *supra*, is equally applicable in

¹⁷N.L.R.B. v. *Le Tourneau*, *supra*, at page 797.

the case of solicitation by union representatives as well as where the solicitation is done by employees.¹⁸

Respondent's argument that to compel it to furnish the Union a place on its property for the Union's use in trying to solicit members would be to compel it to violate the provisions of the Act which prohibits such interference and contribution of support misconceives the type of situation to which this argument has reference. This principle applies only where the employer prohibits one union from conducting organizational activities on its premises while, at the same time, he permits a rival union to engage in such activities. See *Carter Carburetor Corp. v. N.L.R.B.*, 140 F.2d 714, 716 (C. A. 8).

The Board in *Livingston Shirt Corporation*, 107 NLRB No. 109, in speaking of the Union's customary means for communicating with employees stated: "These [means] include individual contact with employees on the employer's premises outside working hours (absent, of course a privileged broad no-solicitation rule), solicitation while entering and leaving the premises, at their homes, and at union meetings." (Emphasis supplied.) This comment seems directly applicable here.

It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union memberships in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to the exercise of its employees' rights of self-organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act.¹⁹

III. The effect of the unfair labor practices upon commerce.

The activities of Respondent set forth in Section II, above, occurring in connection with its operations described

¹⁸Respondent's citation of *Maryland Drydock Co. v. N.L.R.B.*, 183 F.2d 538, (C. A. 4) is inapposite as there the Court held that where conduct, the natural tendency of which is to impair discipline or efficiency is found, it may be forbidden by the company where it takes place on company property.

¹⁹N.L.R.B. v. *The Monarch Machine Tool Company*, 33 LRRM 2488 (C. A. 6); *Carolina Mills, Inc.*, 92 NLRB 1141, enforced 190 F.2d 675 (C. A. 4); *Remington Rand, Inc.*, 103 NLRB No. 25; *Grand Central Aircraft Co.*, 103 NLRB No. 101.

in Section 1, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

IV. The remedy.

Having found that Respondent has engaged in certain unfair labor practices, it will be recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has prohibited the distribution of union literature on and near its parking lot during nonworking time, it will be recommended that Respondent cease and desist from the unfair labor practice found and from any like or related acts or conduct which would tend to interfere with, restrain, or coerce its employees in the exercise of the rights guaranteed under Section 7 of the Act.

Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned makes the following:

Conclusions of Law.

1. Respondent, Seamprufe, Inc. (Holdenville Plant), is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

2. International Ladies' Garment Workers' Union, AFL, is a labor organization within the meaning of Section 2 (5) of the Act.

3. By denying the use of its parking lot and adjacent area for the distribution of union literature during the non-working time of its employees, Respondent has engaged, and is engaging in, unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

Recommendations.

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in the case, it is

recommended that Respondent, Seamprufe, Inc. (Holdenville Plant), its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Enforcing its rule prohibiting the distribution of union literature on and adjacent to its parking lot during the employees' nonworking time, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline but not as to deny access to union representatives for the purpose of effecting such distribution.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind immediately its rule prohibiting the distribution of union literature upon and adjacent to its parking lot during employees' nonworking time:

(b) Post at its plant at Holdenville, Oklahoma, copies of the notice attached hereto and marked Appendix "A." Copies of said notice to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by Respondent's representatives, be posted by Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted:

(c) Notify the Regional Director for the Sixteenth Re-

gion, in writing, within twenty (20) days from the date of the receipt of this Intermediate Report and Recommended Order, what steps Respondent has taken to comply therewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report by Respondent it shall have notified the aforesaid Regional Director in writing that it will comply with and conform to these recommendations now made by the Trial Examiner, that the National Labor Relations Board issue an order requiring it so to do.

Dated at Washington, D. C., this 26th day of March, 1954.

HENRY S. SAHM,
Trial Examiner.

Appendix A.

Notice.

To All Employees at the Holdenville Plant Pursuant to the Recommendations of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will cease and desist from enforcing our rule prohibiting the distribution of union literature on and adjacent to our parking lot during our employees' nonworking hours.

We Will Not engage in any like or related acts or conduct which interferes with, restrains, or coerces our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers' Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organiza-

tion as a condition of employment as authorized by Section 8 (a) (3) of the Act.

We hereby rescind our rule prohibiting the distribution of union literature on and near our parking lot during nonworking hours of employees, except pursuant to reasonable controls not of such character, however, as to deny full access to union representatives for the purpose of distribution.

SEAMPRUFE, INC., (Holdenville Plant)
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

Exceptions of Respondent to Intermediate Report.

To The Said Honorable Board:

Seamprufe, Inc., Respondent, takes exceptions to the Trial Examiner's Intermediate Report as follows:

I.

The following findings, and each of them, are not supported by the record:

(1) "Traffic on the public roads adjoining the plant is light because the plant is located in a rural or semirural area." (I. R. p. 3, l. 43-44).

(2) "As automobiles approach the plant in the morning when the employees report for work, they normally do not stop at any point in the vicinity of the plant until they park their cars on the Respondent's lot." (I. R. p. 3, l. 44-47).

II.

The following findings and conclusions, and each of them, are not supported by and are contrary to the record:

(1) "The record warrants the finding that this nonstop method of driving to and from the plant area is the normal

manner in which the employees invariably arrived at the plant area in the morning and departed in the evening." (I. R. p. 4, l. 5-9).

(2) "It is found, therefore, that the difficulty of reaching prospective union members and distributing union literature to employees off of Respondent's property is virtually impossible because of the special circumstances above described." (I. R. p. 4, l. 9-12).

(3) "Sona Williams, a representative of the charging union, drove to Respondent's property on three occasions in the fall of 1952 * * *." (I. R., p. 4, l. 27-29).

(4) "On those four occasions, she parked her car on Respondent's lot, * * * and then proceeded to distribute union literature to Respondent's employees who were reporting for work." (I. R. p. 4, l. 29-34).

(5) "'You have violated Ordinance No. 413'." (I. R. p. 5, l. 29).

(6) "The next time Sukenis was on Respondent's property was on October 1, 1953." (I. R., p. 6, l. 16-17).

(7) "They did not leave and, about ten minutes later, a Holdenville police officer who accosted them, said, * * *." (I. R. p. 6, l. 32-33).

(8) "Access to Respondent's employees, either upon arrival at, or departure from the plant, can only be effectively accomplished on the parking lot and the sidewalk leading to the employees entrance;" (I. R. p. 7, l. 17-20).

(9) "It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property;" (I. R., p. 7, l. 22-24).

~~(10) "Respondent enforced a rule forbidding the distribution of union literature on its property;"~~ (I. R., p. 7, l. 26-27).

(11) "It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union membership in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to

the exercise of its employees' rights of self organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act." (I. R., p. 9, 1: 38-44).

III.

The Trial Examiner erred in not making and giving effect to the following findings and conclusions, and each of them, which are supported by the record and are material and necessary to the proper and lawful determination of issues presented herein:

- (1) Respondent posted its property against trespassing.
- (2) Respondent enforced its no-trespassing rule against all trespassers on a non-discriminatory basis.
- (3) Sukenis, Krantz, Williams and Covey were paid employees of the union at all of the times material to this proceeding and none of them was an employee of Respondent on any of the occasions in question. (Tr. 9, 21, 37, 56-57, 75-76).
- (4) Sukenis, Krantz, Williams and Covey were trespassers on Respondent's property on each of the occasions that they were directed to leave it or were removed therefrom.
- (5) Sukenis, Krantz, Williams and Covey were directed and required to leave Respondent's property on the occasions involved in pursuance of Respondent's no-trespassing rule.
- (6) The distribution of literature was not the cause of any of said union organizers being required to leave Respondent's property.
- (7) On August 27, September 26, and October 1, 1953, Sukenis was required to leave Respondent's property when she was trespassing thereon on which occasions she had no literature to distribute and there is no evidence that she was soliciting union memberships. (Tr. 51-56).
- (8) There is no evidence that Respondent had a rule prohibiting the distribution of union literature.
- (9) There is no evidence that Respondent had a rule prohibiting the solicitation of union memberships.

(10) There is no evidence that Respondent interfered with or attempted to interfere with any employee in respect to the distribution of union literature or the solicitation of union memberships.

(11) The south side of the employees' parking lot on Respondent's property which is the side thereof nearest a public road is approximately 400 feet north of the Airport Road. (G. C. Ex. #5).

(12) Sona Williams, a union organizer, testified that on the afternoon of January 29, 1954, when the employees left the plant they left in cars; that "most of the time they (the cars) were almost bumper to bumper. In cases where—sometimes they weren't so close, maybe just the length of a car; when they were so close together, some of them were going around five, five, ten mile an hour, and then where they wasn't so thick, I would say some of them were making 20, all the way from five to twenty; * * * I'd say about half of them, just about half of them were almost bumper to bumper." (Tr. 15-17, 28).

(13) Aletha Coffey, a union organizer, testified that the afternoon of January 29, 1954 when the employees were leaving the plant the cars in which they were riding were "Bumper to bumper. On many occasions, * * *, as they strangled out, there would be approximately a car length between them"; and that they were traveling "From the exit, * * * about five and ten mile an hour." (Tr. 66-67).

(14) There is no evidence or testimony in the record with respect to the movement of cars when employees come to work in the morning other than the route that is ordinarily followed.

(15) It is clear from the record that the employees do not arrive at the plant in the morning at the same time or at substantially the same time.

(16) The record shows that on July 23, 1953, Sukeinis and Krantz were at the plant in the morning when the employees were going to work; that they handed out two leaflets; that they were then arrested by a police officer of the City of Holdenville; that they went or were taken from the plant to town where they posted bonds; that at least Sukeinis then

went back to the plant to resume her distribution of leaflets and at that time employees "were still going into the plant." (Tr. 46-48).

(17) All of the occasions on which union organizers distributed or undertook to distribute literature to employees were in the morning when the employees were going to work.

(18) All of the occasions on which union organizers went to the plant to say "Good morning" to the employees when they had no literature to distribute were in the morning when the employees were going to work with the sole exception of September 26, 1953, when Suenis and Covey went to the plant at noon.

(19) There is no evidence or testimony that the union organizers ever distributed or undertook to distribute literature or greeted or otherwise communicated or attempted to communicate with employees in the afternoon when the employees were leaving work.

(20) There is no evidence or testimony that the union organizers ever attempted to distribute union literature to employees at the entrance to or exit from Respondent's property either in the morning as the employees came to work or in the afternoon as they left the plant property or at any other time.

(21) There is no evidence or testimony in the record with respect to any attempt by the union to hold or conduct organizing meetings of employees or any attempt to communicate with employees at their homes in person or by mail or telephone or otherwise.

(22) There is nothing in the record to support a finding or inference that efforts of the union to distribute union literature to or to communicate with employees off Respondent's property would be unsuccessful or ineffective.

(23) There is no evidence or testimony that the union has attempted to avail itself of the customary means for communicating with Respondent's employees in respect to organization or otherwise.

(24) The burden was on the General Counsel to show

that non-employee union organizers are or have been unable to contact Respondent's employees off Respondent's property.

(25) The General Counsel did not meet the burden that was and is his to show that non-employee union organizers are or have been unable to contact Respondent's employees off Respondent's property.

(26) The burden was not on Respondent to show the necessity for or to otherwise explain or defend the establishment or enforcement of its no-trespassing rule under which non-employee union organizers were not permitted to enter upon and use its property.

(27) There is nothing in the record to support a finding or inference that the non-employee union organizers were under a "unique handicap" in communicating or attempting to communicate with Respondent's employees or that it was "impossible" or "virtually impossible" for them to have such communication off Respondent's property.

(28) The establishment of its no-trespassing rule and its non-discriminatory enforcement of that rule with respect to non-employee union organizers was and is within Respondent's legal and Constitutional rights and same was not violative of the legal rights of its employees or of the union or its non-employee organizers.

(29) The leaflet distributed by Sukenis and Krantz on July 23, 1953 (G. C. Ex. No. 4), contains the following statements:

"The Southwest ILGWU Delegation Demonstrates Protection of Human Rights and Human Spirit of Seamprufe Workers" (front)

"The Southwest delegation to the recent convention of the ILGWU demonstrate their determination to help Seamprufe's workers secure recognition of the rights and freedom due them as citizens of the U.S.A." (front)

"We need your assistance in the struggle against the industrialists and manufacturers who still carry the germs of human hatred in their breasts."

"Most of these anti-union garment manufacturers came to

these states from all sections of the country. They have settled in McAlester and Holdenville, Oklahoma: * * * bringing with them an old hatred and prejudice which they transplanted and intermixed with a new selfishness, and which encourages them to deny their workers their human rights.

"Yes, Seamprufe, Inc., in McAlester and Holdenville; * * * have already succeeded in imprisoning the minds of most of their workers."

"We, the members of the ILGWU who live and function in these states, appeal to you to join us and help us stop these garment manufacturers from continuing to imprison the human spirit of the human beings they employ!" (Third page).

(30) To force Respondent to withhold enforcement of the no-trespassing rule in respect to non-employee organizers under the facts of this case would be to violate its legal and Constitutional rights.

(31) The complaint is without merit and should be dismissed.

IV.

The Trial Examiner erred in overruling and denying each of Respondent's motions to dismiss made at the close of the General Counsel's case in chief and at the close of the evidence.

V.

The Trial Examiner erred in overruling Respondent's objections to and in denying its motion to strike testimony relating to alleged incidents that transpired outside and beyond the six months limitation provision of the Act. (Tr. 97-20, 38).

VI.

The Trial Examiner erred in admitting, taking into account and giving effect to testimony relating to alleged incidents occurring outside of and beyond the six months limitation period provided in the Act. (Tr. 17-20, 38).

VII.

The Trial Examiner erred in admitting General Coun-

sel's Exhibit No. 2, and, in the alternative, if it is finally determined that same was admissible, the Trial Examiner erred in attempting to limit the purposes for which it may be used. (I. R., p. 6, footnote 11, Tr. 8, 86-93).

VIII.

The Trial Examiner erred in holding, in effect, that the burden was on Respondent to show the necessity for and to otherwise defend or justify the establishment and enforcement of that rule.

IX.

The Trial Examiner erred in finding that Respondent contended, contrary to the Examiner's findings, "that since the union has adequate means of communication with its employees outside of company property, the enforcement of its no-solicitation rule does not improperly restrict the employees' rights under Section 7 of the Act" in that Respondent at no time admitted or contended that it had a no-solicitation rule and while Respondent believes that the union has had and now has such adequate means it did not undertake to make such proof for the reason that the burden was on General Counsel to prove that it did not have and does not have such means which General Counsel failed to do. (I. R., p. 8, 1. 25-30).

X.

The Trial Examiner erred in finding and holding, in effect, that Ordinance 413 of the City of Holdenville unlawfully curtailed rights of Respondent's employees. (I. R., p. 8, 1. 15 et seq.).

XI.

The Trial Examiner erred in finding and concluding, in effect, that there is no distinction or difference between the rights of employees to solicit in behalf of the union on their employer's property and the rights of non-employee union organizers to solicit in behalf of the union on the employer's property; and that "To differentiate between employees soliciting on behalf of the union and non-employee union solicitors would be a differentiation not only without substance but in clear defiance of the rationale given by the

Board and the Courts for permitting solicitation," said findings and holdings being contrary to the decisions of the Board and the Courts and contrary to the law. (I. R., p. 9, 1. 1-16).

XII.

The Trial Examiner erred in his construction of Respondent's purpose in citing Maryland Drydock Co. v. NLRB, 183 F 2d 538, in its brief to the Examiner and the effect of the Court's holding therein. (I. R., p. 9, footnote 18).

XIII.

The Trial Examiner erred in his findings and conclusions with respect to Respondent's contentions concerning the furnishing of its property to a union for organizational purposes and in the principle enunciated by him in respect thereto. (I. R., p. 9, 1. 18-27).

XIV.

The Trial Examiner erred in his construction and application of the Board's holding in Livingston Shirt Corporation, 107 NLRB No. 109, generally and particularly wherein he appears to say that the Board's reference to "Solicitation while entering and leaving the premises" means or includes on premises solicitation as well as solicitation at the entrances to and exits from the premises by non-employee solicitors.

XV.

The Trial Examiner erred in not finding and giving effect to the Court's holding in NLRB v. Cities Service Oil Co., 122 F 2d 149 in which it was held that representatives of the certified bargaining agent were entitled to board tankers in carrying out their duties in respect to bargaining and grievance handling but that such representatives were not entitled to solicit union memberships while on board which is directly contrary to the position that the Examiner has undertaken to adopt.

XVI.

The Trial Examiner erred in not taking into account and giving effect to the holding of the Court in Marshall Field

& Company v. NLRB, 200 F 2d 375 which was cited to him in Respondent's brief and which is contrary to the position that he has undertaken to enunciate in his report.

XVII.

The Trial Examiner erred in citing United Aircraft Corp., 67 NLRB 594, 606, in support of the finding and conclusion that "It is virtually impossible to distribute union literature to employees or solicit union memberships off Respondent's property: 12" because in the United case, as appears from footnote 12 of the Report, "it was found that the employees did not stop their cars to receive literature so that 'distribution to these employees is virtually impossible' " which has no application to the facts of the instant case inasmuch as no attempt was made to effect such distribution and it is impossible on the present record to tell whether or not the employees would stop to receive proffered literature.

XVIII.

The following finding and conclusion of the Trial Examiner is not supported by and is contrary to the record and the law,

"It is found, therefore, that the Respondent's rule prohibiting the distribution of union literature and the solicitation of union memberships in and around its parking lot and the employees' entrance, constitutes an unreasonable impediment to the freedom of communication essential to the exercise of its employees' rights of self-organization, and that Respondent's maintenance and enforcement of the rule violated Section 8 (a) (1) of the Act. 19" (I. R., p. 9, 1, 38-44).

XIX.

The findings and conclusions set forth in said Report under the heading "IV. The Remedy", and each of them, are not supported by and are contrary to the law and the evidence.

XX.

The "Conclusions of Law" numbered 3 and 4 are not supported by and are contrary to the law and the evidence.

XXI.

The "Recommendations", and each of them, set forth in

said Report are not supported by and are contrary to the law and the evidence.

PROSKAUER, ROSE, GOETZ & MENDELSON,
MUELLER & MUELLER,

Attorneys for Seamprufe, Inc.

By: HAROLD E. MUELLER.

Decision and Order.

On March 26, 1954, Trial Examiner Henry S. Sahn issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Respondent filed exceptions to the Intermediate Report and the Respondent submitted a supporting brief.¹

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions of the General Counsel and the Respondent, the Respondent's brief, and the entire record in this case, and hereby adopts the Trial Examiner's findings,² conclusions,³ and recommendations⁴ and modifications⁵ noted below.

Order.

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended,

¹The Respondent's request for oral argument is hereby denied because the record and the exceptions and brief, in our opinion, adequately present the issues and the positions of the parties.

²In its brief, the Respondent makes the following contentions to support its position that it did not violate Section 8 (a) (1) of the Act, each of which we find lacking in merit: (a) Respondent asserts that it does not have a no-solicitation rule, but has a nondiscriminatory no-trespassing rule. In our opinion, this distinction is one without a difference. For, regardless of how the rule is described, the gravamen of the offense is that the Respondent applies it so as to prohibit the distribution of union literature and solicitation of union memberships by Union representatives on and near the parking lot during non-working time; (b) Respondent points out that, while there is evidence in the record to support the Trial Examiner's finding that in the evening employees depart the plant area without stopping at any point in the vicinity of the plant, there is no evidence that this also occurs in the morning when the employees report to work. In our opinion

the National Labor Relations Board hereby orders that the Respondent, Seamprufe, Inc. (Holdenville Plant), Holdenville, Oklahoma, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Enforcing its rule prohibiting the distribution of union literature and solicitation of union membership on and adjacent to its parking lot during the employees' nonworking time, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution or solicitation.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor

the Trial Examiner has drawn a reasonable inference from the facts. Thus, if the employees are able to engage in this non-stop method of driving in the evening despite the fact that they all finish work and leave at 4:30 p.m., it is very unlikely that they do not follow a similar procedure in the morning when they undoubtedly do not reach the vicinity of the plant at the same time; and (c) the Respondent directs attention to the fact that there is no evidence that the union organizers actually attempted to distribute literature at the plant entrances or exits. However, we do not believe that it was necessary for the organizers to go through the motions of making such an attempt as it is apparent that the nonstop method of driving by the employees would have rendered the effort futile and abortive.

³Monsanto Chemical Company, 108 NLRB No. 151. Although Member Beeson dissented from the majority opinion in that case, he nevertheless now considers himself bound by that decision.

⁴In his Report, the Trial Examiner incorrectly stated that Sona Williams drove to the Respondent's property on three occasions in the fall of 1952, and again on March 5, 1953. The Report is hereby corrected to show that she went to Respondent's property on two occasions prior to March 5, 1953.

⁵The General Counsel excepts to the Trial Examiner's failure to include in The remedy, Conclusions of Law, and Recommendations of the Intermediate Report his finding that the Respondent's rule also prohibited the solicitation of union memberships. We find merit in this exception and the Report is hereby modified accordingly.

organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind immediately its rule prohibiting the distribution of union literature and solicitation of union memberships upon and adjacent to its parking lot during the employees' nonworking time.

(b) Post at its plant at Holdenville, Oklahoma, copies of the notice attached hereto as an appendix.⁶ Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent or its representatives, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., July 7, 1954.

GUY FARMER,

Chairman,

ABE MURDOCK,

Member,

IVAR H. PETERSON,

Member,

PHILIP RAY RODGERS,

Member,

ALBERT C. BEESON,

Member,

(Seal)

National Labor Relations Board

⁶In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "Pursuant to a Decision and Order" the words "Pursuant to a Decree of the United States Court of Appeals, Enforcing an Order."

Appendix

Notice.

To All Employees at the Holdenville Plant Pursuant to a Decision and Order of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

We Will cease and desist from enforcing our rule prohibiting the distribution of union literature and solicitation of union memberships on and adjacent to our parking lot during our employees' nonworking hours.

We Will Not engage in any like or related acts or conduct which interferes with, restrains, or coerces our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist International Ladies' Garment Workers Union, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3) of the Act.

We hereby rescind our rule prohibiting the distribution of union literature and solicitation of union memberships on and near our parking lot during nonworking hours of employees, except pursuant to reasonable controls not of such character, however, as to deny full access to union representatives for the purpose of distribution.

SEAMPRUFE, INC. (Holdenville Plant),
(Employer).

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[Transcript of Testimony]

1 District Courtroom, County Court House, Holden-
ville, Oklahoma, Tuesday, February 2, 1954.

2 Pursuant to notice, the above-entitled matter came on
for hearing at 10:00 a. m.

3 Before Henry S. Sahm, Esq., Trial Examiner.

4 Appearances: Willis C. Darby, Jr., Esq., 300 West Vick-
ery, Fort Worth, Texas, appearing as Counsel for the Gen-
eral Counsel; Charles J. Morris, Esq., Mullinax & Wells,
1716 Jackson Street, Dallas 1, Texas, appearing on behalf
of the Charging Party; Karl H. Mueller, Esq., and Harold
E. Mueller, Esq., 507 Burk Burnett Building, Fort Worth,
Texas, appearing on behalf of Respondent.

7 Mr. Darby: I will ask the reporter to mark as
General Counsel's Exhibit 2 for identification a cer-
tified record in the municipal court in the City of Holden-
ville, State of Oklahoma, City of Holdenville versus Irving
Krantz and Georgia Sukenis.

(Thereupon, the document above referred to, was marked
General Counsel's Exhibit No. 2, for identification.)

Mr. Darby: I offer General Counsel's Exhibit 2 in evi-
dence.

Trial Examiner Sahm: Would you show it to counsel?

8 Mr. Darby: I have given him a copy, Mr. Ex-
aminer.

Trial Examiner Sahm: Oh, I see. Is there any ob-
jection?

Mr. Karl Mueller: At this time, Mr. Examiner, the re-
spondent objects to the receipt in evidence of this transcript
on the grounds that it is incompetent, irrelevant and im-
material to any issue in the case and no proper predicate
has been laid for its introduction or receipt in evidence.
We don't question the fact that it is what it purports to
be, a certified copy, that is, we don't attack the authenticity
of the transcript such as it is.

9 SONA WILLIAMS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Darby.

Q. By whom are you employed, Mrs. Williams?—A. International Ladies' Garment Workers' Union.

Trial Examiner Sahm: Is that in Oklahoma, [Batch]?

The Witness: Yes, it is.

Q. (By Mr. Darby.) In what position are you employed?—A. Representative.

Q. Have you had occasion to visit the Seamprufe plant in Holdenville, Oklahoma?—A. Yes, I have.

Q. When was it that you first went there?—A. Well, I don't remember the exact date, but it was sometime in the early fall of '52.

10 Q. What was your purpose of going to the Holdenville plant?—A. To give a leaflet.

Q. Will you tell us what you did when you got there?—A. Well, we went, we were standing at the entrance on it, I mean the entrance of the sidewalk from the parking area which goes to the employees' entrance on the west side of the building.

Q. And who was with you?—A. Frances Beare and Luey Gentile.

Q. And who are they?—A. They are representatives of the Garment Workers' Union.

Q. (By Mr. Darby.) Now, what side of the plant was that on in directions of north, east, south and west?—A. It was on the west.

Q. Were you standing in the dirt or on the sidewalk or what?—A. Well, as I explained, there is a sidewalk running north and south; then it joins the one leading to the entrance of the building and we were standing where it joins on either side of this walk on the dirt.

Q. Now, where had you parked your automobiles?—A. In the parking area.

Q. Did you notice any signs as you came into the parking area at that time?—A. No, I didn't.

11 Q. What did you do after you had given your leaflets out?—A. Got in the car and came home, back to McAlester.

Q. Was it in the morning or the afternoon that you left?—A. In the morning.

Q. Did you have occasion to go back after that?—A. Yes, I don't remember the exact dates, but we went back, I would say, in approximately three or four weeks later, the same three.

Q. (By Mr. Darby) Do you know a person by the name of Irving Krantz?—A. Yes, sir.

Q. Who is he?—A. He is a representative of the International Ladies' Garment Workers' Union.

Q. Did you have occasion to go to the Holdenville plant of Seampurfe in the company of Mr. Krantz?—A. Yes, I did.

Q. When was it that you went with him?—A. On March 5, 1953.

Q. Did you go by automobile?—A. Yes.

12 Q. Where did you park your car?—A. In the parking area.

Q. And that is on which side of the plant?—A. On the west side.

Q. After you parked your car, what did you do?—A. We gave a leaflet in the same place as we had given the first one.

Q. Was it in the morning or evening or noon?—A. Morning.

Q. Did you have occasion to see anyone connected with management on that day?—A. Yes, when all the employees but two, as I remember, had gone in, Mr. Nichols came out.

Q. And who is Mr. Nichols?—A. He is the manager of the plant.

Q. Do you see him in the courtroom?—A. Yes, I do.

Q. Tell us what happened when Mr. Nichols came out?

—A. He was talking to Irving Krantz and said, "You are trespassing on company property and you must leave now."

Q. Did you hear this conversation?—A. Yes, I did.

13 Q. Will you continue with the conversation?—A.

Then, Irv said "Hello" to Mr. Nichols and remarked something about it being a cold morning, and then he introduced me to Mr. Nichols. Mr. Nichols turned to me and said "Hello." Then he said to Krantz, "You heard what I said. Leave now," and Irv said, "I didn't know that we were on company property," that we would check and see, and Mr. Nichols said he didn't care how much we checked, and he said, "Are you going now or shall I call the cops?" And Irv told him to go ahead and call the cops and then we went out there, I'd say approximately two or three minutes before leaving.

14 Q. Have you returned to the plant since March 4 or 5?—A. Yes, last Friday, just the airport road.

Q. The airport road. What time of day did you go there last Friday?—A. Approximately, it was, I'd say, about five minutes until 3:00-4:00.

Q. Did you observe any people or automobiles either leaving or going into the parking lot at that time?—A. Yes, we did.

Q. How many cars, if any, did you observe going into the parking lot that is on the west side of the plant?—A. Twenty-five, I believe.

Q. Did you make a count of them at that time?—A. Yes, I did.

Q. Did you notice how many occupants were in those cars?—A. There was twenty-nine.

Q. Did you observe where these cars went after they turned into the road leading into the parking area?—A. They went on to the parking area.

Q. Did you observe any cars leaving the parking lot?—A. Yes, when the employees came out, they left the parking lot.

Q. By what means did you observe the cars leaving?—A. All cars on the lot circled around on the north side of the building at the east exit, all except two cars that came out and went in the direction of the airport.

15 Q. Were you able to observe the point where the road that runs east and west on the north side of the plant— —A. Yes.

Q. —joins the public road?—A. Yes.

Q. Tell us what the cars did at that intersection?—A. They just came on out into the old road that leads into the airport road.

Q. Well, did they stop?—A. No, I didn't see any of them stop.

Q. How far apart were these cars that were coming out by that road?—A. Most of the time they were almost bumper to bumper. In cases where—sometimes they weren't so close, maybe just the length of a car.

Q. How many cars did you observe leave by that road?—A. 225.

Q. 225 cars?—A. Let's see. Leaving by this road?

Q. Yes.—A. 80 cars.

Mr. Karl Mueller: Excuse me. May I inquire of counsel what was the 225?

Q. (By Mr. Darby) Was it 225 cars or 225 people?

—A. 225, people. That was a misunderstanding on my part. There were 80 cars.

16 Q. Did you observe whether or not any employees walked away from the plant?—A. No, I didn't see any.

Q. Do you think you would have seen them had any walked away?—A. I do, because I could see both entrances on the east and the west.

Q. Did you see any buses in the vicinity?—A. No, I didn't.

Q. Did you make a notation of how long it took these 80 cars to leave the plant?—A. Yes, I did.

Q. How long did it take?—A. Ten minutes.

Q. Were they scattered throughout the entire ten minutes, the cars, leaving?—A. Yes.

Q. Could you tell us how fast these cars were going as they reached the intersection of the road as it runs along the north side of the plant where that road intersects with the public road that runs along the east side of the plant?

A. When they were so close together, some of them were going around five, five, ten mile an hour, and then where they wasn't so thick, I would say some of them were making 20, all the way from five to twenty.

17 Mr. Karl Mueller: * * * At this time if we may, Mr. Examiner, we will move to strike all the testimony of the witness with respect to the alleged occurrences in the early fall of 1952 in that all that testimony is incompetent, irrelevant and immaterial to any issue in this proceeding.

Trial Examiner Sahm: Is that because of the statute of limitations?

Mr. Karl Mueller: Yes, falls outside the six-month period specified by the statute; no finding, we submit, in view of the statutory provision, can be made in this proceeding based on that testimony in whole or in part. For that reason we move it all be stricken.

18 Trial Examiner Sahm: Does that complete your motion?

Mr. Karl Mueller: Yes, sir, on that particular phase of the testimony.

Trial Examiner Sahm: Background, of course, can never be the basis for the making of a finding. The Act specifies itself that findings can only be made on substantial evidence. I find, however, that in cases of this type, where there are allegations of a course of conduct, that background is sometimes revealing in the sense of interpreting and explaining events that happened within the statutory period. Then, too, the Examiner likes to feel that in writing his report he can separate the relevant from the irrelevant, and he is also keenly aware and conscious of the fact that any findings he makes can only be based on relevant and material evidence. So for that reason I am going to overrule your objection.

Mr. Karl Mueller: We have an automatic exception, of course.

Trial Examiner Sahm: Yes, as I indicated at the outset, an automatic exception is given on all rulings.

Mr. Karl Mueller: Now, we would address the same motion, if the Examiner please, on the same grounds, to the witness' testimony concerning the alleged occurrences on March 5, 1953. The charge in this case was filed Sep-

tember 17, 1953. The complaint alleges that on or about March 17, 1953, certain things took place as is set out in Paragraphs 5 and 6 of the complaint.

19 It is clear to us that all of these matters and things about which the witness testifies, or has testified, as having occurred on March 5, 1953, fall outside the statutory limitation period. No findings can be made here; we say none of that is germane to the point, and we think that, with due respect to the Examiner's observations, and only by way of further explaining our position, we think that this business of taking these things in for the purposes of background would indicate that the Examiner has the feeling that he can take those things into account, though he can make no direct findings predicated on those things. If they could have no influence on the Examiner's findings and conclusions within the frame work of the complaint itself, of course, there would be no purpose of taking them into account at all, and if they do influence or affect findings, then we think that there is actually the situation of giving, by indirection, what can't be done directly, that is, giving weight and effect to matters and things that clearly fall outside the statutory limitation period. That is just by way of amplifying my motion.

Mr. Darby: Mr. Examiner—

20 Trial Examiner Sahm: Let me answer that. The spoken word is never as precise as the written word, and evidently I wasn't precise enough in justifying or rather explaining my ruling. In these cases, there are certain imponderables, and intangibles, that an Examiner takes into account in arriving at conclusions. Motivation, for instance, and this background very often will permit an Examiner to interpret, or rather I will put it this way, material which is brought in which is material and relevant, is sometimes ambiguous standing by itself, but in the context of the background, it sometimes is revealing. It sometimes permits interpretation of that material and it sometimes lends itself to explanation of, let us say, the relevant and material.

So that was the basis for the ruling. Now, with respect to your objection as to the events occurring on March 5,

1953, I haven't had an opportunity to study the complaint, and I think that this might be an excellent time for me to do so, and while I am, there will be a five or ten-minute recess.

21 Trial Examiner Sahm: I am going to overrule the objection. Exception is noted.

Cross Examination by Mr. Karl Mueller.

Q. Mrs. Williams, you testified about an Irving Krantz. Where is he?—A. I don't know where Irving is myself at this time.

Q. In March he was employed as an organizer by the union, was he?—A. Yes, he was.

Q. As I understand it, that is your job.—A. Yes.

Q. Full time paid employee of the union?—A. That's right.

Q. And your job is to carry on organizational work for the union?—A. That's right.

Q. And as you understand, that was Irving Krantz' job?—A. Yes, sir.

Q. I believe you testified, Mrs. Williams, that last Friday you were out in the vicinity of this plant.—A. That's right.

Q. I believe you said that you were in your automobile or in an automobile on the airport road out there by the plant property.—A. That's right.

22 Q. Were you parked on the road that runs along the front of the plant or the road that runs down to the airport along the south side of the plant property?—A. On the airport road on the south side of the plant property.

Q. And were you parked near the point at which the private road into the plant property intersects with the airport road, so-called?—A. I was parked between the two roads, the one that goes in marked "Private Property" which is on the west side of the building where the employees enter, between that and the road running north and south on the east side of the plant. I was parked at a point to where I could observe people leaving the plant on the west, going to the parking lot, and also the point where the employees' exit runs into the street running north and south.

Q. Now, this airport road, as I understand it, runs east and west.—A. That's right.

Q. And the road along the front of the property runs north and south.—A. Well, now, I suppose the front is where the employees enter the parking area? Is that what you mean?

Q. I'd call that the back.—A. Is that the back? If you call the front on the east side where personnel enters, administrative offices?

23 Q. Yes, that is what I refer to as the front end of the building.—A. Yes.

Trial Examiner Sahm: Pardon me one moment. Is there a distinction between the entrance at the front and at the rear? Now, do I understand that the rear is the so-called employees' entrance [or the east] or the west side, and on the east side is the front of the building which is the office personnel entrance?

Mr. Karl Mueller: That is substantially correct, Mr. Examiner. As I understand it, most of the employees do enter through the doorway on the west side of the building. Some employees, I am told, do come in through what I have referred to as the front door; that is, some of the production workers. There are hallways leading from the front door back to the factory area, if I may refer to it as such, as distinguished from the office and the cafeteria.

Trial Examiner Sahm: Is that the east side?

Mr. Karl Mueller: Yes.

Q. (By Mr. Karl Mueller) Is that the way you understand it, the way we have described it, Mrs. Williams?—A. Yes.

Q. Now, as I understand it, last Friday you stationed yourself out there on this so-called airport road. It is your understanding that is a public thoroughfare?—A. Yes.

24 Q. And is that also true with respect to the road that runs along what we call the front of the building, that is, north and south of the property?—A. I suppose that is a public thoroughfare, too.

Q. Yes, and this road that intersects with the airport road and runs in a northerly direction along the east side

of the plant—pardon me—the west side of the plant and then turns at a point somewhat beyond the north side of the plant and proceeds in an easterly direction, that is a private road?—A. That's right.

Q. And this parking area that you have talked about is reached by this private road on company property?—A. That's right.

Q. This was about quitting time in the afternoon, was it, that you went out there on the airport road to observe what happened?—A. Yes, around quitting time.

Q. I believe you indicated that you saw a number of cars proceed along the airport road, turn into the private roadway.—A. That's right.

Q. And proceed in a northerly direction toward the plant and did you observe those cars stop and people from the plant get into those cars and then the cars proceed on around the north end of the building and back into the public road?—A. That's right.

25 Q. There were some cars parked, I assume, on that occasion west of this private roadway and west of the plant?—A. You mean the parking area?

Q. Yes.—A. Yes.

Q. And you saw some employees leave the building and get into their cars and drive away?—A. That's right.

Q. Those are graveled roads, are they not, we have been talking about, the airport road and the road running along the front of the property as well as the private road?—A. That's right.

Q. Well, do I understand your testimony to be that on this occasion that you were out there parked on the airport road, that these people left the plant by driving south along the private road to the point where that private road intersects on the airport road?—A. That's right.

26 Q. And they would drive past you?—A. No, they didn't drive past me; only one car drove out past me.

Q. Where were you parked with respect to the point where the private road intersects with the airport road? Were you west of that point that is farther toward the airport or farther east of it?—A. I was farther east. I

was near the public road on the east which joins the airport road.

Q. The airport road you have been talking about is the one along the south side of the property that runs in a general westerly direction from the public road in front of the plant?—A. That's right.

Q. Well, when you observed these cars leaving the plant on this occasion that you say you saw 225 people leave in 80 cars, were those cars traveling in a southerly direction along the private road toward the airport road and out that way or, then, did they proceed in a northerly direction and turn east and run alongside the north side of the property, the plant itself, into the roadway that runs along the front of the property?—A. All the cars that came out by this, around the north part of the building and out this exit into this public road on the east, traveled south to the airport road and then proceeded toward Holdenville, the town.

Trial Examiner Sahm: I'd like to go over that again if I may. The employees came out of the parking lot into the private road; is that correct?

The Witness: (Nods head.)

Trial Examiner Sahm: They proceeded on that way south on the private road; am I correct?

The Witness: No, north, around the building, north and then east around the building, the north end of the building. They proceeded east to the public road and then on out to the airport road where they turned left.

28. Trial Examiner Sahm: I see. In other words, they practically go around three sides of the building until they come, they go south on the public road where it intersects with the airport road and then they turn left and go in an easterly direction?

The Witness: That's right.

Q. (By Mr. Karl Mueller) Now, is it your testimony, Mrs. Williams, that when these automobiles entered the road

in front of the plant from the private road that runs along north side of the factory building, they were at that point, most of them bumper to bumper?—A. Well, most of the time I'd say they were, yes, sir.

Q. Proceeding very slowly?—A. Some of them, I'd say, about five, oh, I'd say about half of them, just about half were almost bumper to bumper. I couldn't say bumper to bumper, but pretty close.

Q. What we generally understand by that, only a few feet between them.—A. Yes.

Q. That is, there were a line of cars up there and they were proceeding slowly from the public road, I should say from the private road off the plant property into the public road.—A. I'd say they were going anywhere from five to twenty mile an hour. Some of them came out of there when they had a clearance, I'd say, they were doing
29 twenty mile an hour, quite a few of them.

30 Q. Well, I don't want to confuse you. As I understand it, these 80 automobiles all left the plant roadway, the private roadway, came into the road in front of the plant, proceeded in the southerly direction where that road intersects the airport road and headed for town.—A. Yes.

Q. All within ten minutes?—A. That's right.

Q. Anybody with you?—A. Aletha Covey.

Q. Did you count all of the people in these cars as they went speeding past?—A. Yes, I did, as they came into the airport road.

Q. You counted these 225 people in 80 automobiles in ten minutes?—A. That's right.

Q. You did that yourself?—A. I did.

Q. Without any assistance from anybody else?—A. That's right.

Redirect Examination by Mr. Darby.

31 Q. Did you make any kind of written notation while you were marking those?—A. I did.

Q. What kind of notation?—A. On the left hand side of my paper, I had number of cars and on the right hand,

side I had number of people in cars and I also had number of cars entering plant by way of this private road.

Q. Did you notice any fence there at the plant?—A. Fence on the east side in front of the plant running north and south.

Q. And that would be on the side of this public road that runs north and south to the east of it?—A. That's right.

Q. Was there any other fence?—A. No, I didn't see any other.

Q. What kind of fence was it?—A. Just a wire fence, a barb-wire fence.

32 Q. Approximately what time of day was it that you went out to the plant on Friday afternoon?—A. Approximately around ten minutes to 4:00, I believe.

Q. And what time was it that the employees started coming out?—A. About 4:30, 4:31, something like that, maybe a minute or so past, that I noticed the first one.

Trial Examiner Sahm: That is January 29, 1953, isn't it?

Q. (By Mr. Darby) What year was that, '53?—A. Last Friday, the 29th, I believe.

Q. It would be 1954?—A. '54, I am sorry.

Q. (By Mr. Darby) Were there already some cars in the parking lot when you got there?—A. Oh, yes.

33 Q. And these 30 that you spoke of, they came while they were there, these 30 cars that you saw go into the parking lot?—A. That's right.

Q. Perhaps 30 was the wrong figure that you saw.—A. Cars into the parking lot, twenty-five.

Q. They went in while you were there?—A. That's right.

Q. Now, when these automobiles reached the intersection of the plant, or, rather the road that runs north and south on the east side of the plant and the airport road, did they stop at that point?—A. No, they didn't.

Q. They continued to go?—A. They continued to go. I didn't see one car stop.

Q. Your testimony has been as to the speed at the time they left the private road running east on the north side of the plant where that road intersected the north and south public road; is that correct?—A. That's right.

* * * * *

GEORGIA SUKENIS, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * *

Direct Examination by Mr. Darby.

36 Q. Mrs. Sukenis, by whom are you employed?—A. International Ladies' Garment Workers' Union.

Q. In what position?—A. Union representative.

Q. Did you have occasion in that capacity to go to the Holdenville plant of Seamprufe, Inc.?—A. Yes, sir.

37 Q. Do you recall when it was that you first went there?—A. The first time I went to the Holdenville plant was in February. I don't know the exact date, but I was with Sona Williams, and we gave a leaflet. I can't give the leaflet, but it was in February.

Q. Of what year?—A. Of 1953.

Q. Where did you park the automobile that you came in on that day?—A. Parking lot.

Q. In what parking lot is that?—A. It is right in the west entrance where the employees go into the—

Q. Into the plant?—A. Uh-huh.

Q. Could we call that the employees' parking lot?—A. Yes.

* * * * *

38 Mr. Karl Mueller: Mr. Examiner, may we interpose an objection to this entire line of questions as being incompetent, irrelevant and immaterial and not within the issues in this case; all this matter concerning something that may have happened in February of 1953, and it certainly falls within the ban of the limitation period provided by the statutes.

Mr. Darby: May the Examiner please, I would like to state one thing; that is not a rule of evidence, it is a statute of limitations. This is evidence. We are not claiming

any unfair labor practice as of that date, because we are banned by the Section 10 B of the Act, but this is evidence as distinguished from an unfair labor practice claim even though the evidence might have, had the charge been timely filed, amounted to unfair labor practice.

Trial Examiner Sahm: That perhaps states in another way the point I was attempting to make that there is a difference between the admissible evidence as such and the probative weight which can be given to that testimony when it is admitted. Your objection is overruled.

Mr. Karl Mueller: I think that is the point at which we meet head-on. We respectfully insist you can't give any weight to it, because, if you do, you obviously nullify the congressional intent expressed in the limitation period provided for in the statute. That is the way we see it. Thank you, sir.

Q. (By Mr. Darby) Mrs. Suenis, I think you were at the parking lot when you parked your car. What did you do then?—A. We got out and went to the west entrance where the employees go in to hand out leaflets.

Q. In relation to the entrance, where did you stand?—A. The road leading north and south.

Q. Is there a sidewalk there?—A. Yes.

Q. And is the sidewalk running east and west?—A. It is north and south, and the other runs into the east side where the employees go in.

Q. In other words, there is that sidewalk that runs north and south along the west side?—A. It meets the one that goes, where the employees go into the plant.

Q. And then there is one on the east and west from the north and south sidewalk and the east and west goes up to the employees' entrance?—A. Yes.

Q. Now, where did you stand?—A. Stand in the road, just the edge of the walk.

Q. And where in relation to the intersection of these two sidewalks?—A. Well, I was moving around. I didn't—

Q. You didn't stand in the same place all the time?—A. No.

Q. Now, do you recall seeing any signs as you came into the parking lot on that occasion?—A. No, I didn't see any.

Q. Did you have any conversations with any of the employees?—A. No, just good-morning, and the leaflet, handed them a leaflet.

Q. Was that in the morning, afternoon or evening?—A. Pardon?

Q. Was that in the morning, or afternoon?—A. Morning. Very cold.

Q. It was very cold. Did anyone ask you to leave the premises?—A. No.

Q. When was it that you left?—A. After we gave all the leaflets and stayed around a while and then we left.

Q. Did you return to the Seamprufe plant after that trip in February?—A. Yes, sir.

Q. When did you go there the next time?—A. I 41 went May 27.

Q. Of what year?—A. 1953.

Q. And what time of day was that?—A. In the morning.

Q. Were you with anyone?—A. No, sir.

Q. Did you have any leaflets to give out that day?—A. No, sir.

Q. Why did you go?—A. Because I was assigned to go to Holdenville plant, stay two days in Holdenville. In the meantime my father was dying with cancer, and I had been away from Holdenville for about a month, and I wanted the girls to know that I was still around, so I went down that morning and said good-morning.

Q. Now, did you notice any signs that morning as you came to the plant?—A. No, I didn't see any signs.

Q. Where did you park your car?—A. In the parking lot.

Q. After you parked your car, what did you do?—A. Got out of the car.

M. Karl Mueller: Excuse me, Mr. Examiner. May we have an objection to this entire line? There isn't anything in the complaint about anything that took place on May 27, 1953. It is incompetent, irrelevant and immaterial.

42 Mr. Darb: May the Examiner please, this is only part of the proof. We are not alleging any unfair labor practice occurred on that particular day.

Trial Examiner Sahm: Well, with that limitation and explanation, I will overrule the objection.

Mr. Darby: I'd like to qualify that, that we are not saying that there was not a rule enforced as of that day which will go to certain paragraphs of the complaint, which we allege was enforced from March 17 on until today; that there was no independent violation other than that. I'd like to make that clear.

Q (By Mr. Darby) What did you do there that day?
—A. Just said good-morning and didn't do anything; just left soon after all the employees went into the plant.

Q. Did you have any short conversations with any of the girls?—A. No, I think—no.

Q. After the girls had all gone into the plant, what did you do?—A. Got in the car and went back to Holdenville; had breakfast.

43 Q. Did you again return to the Holdenville plant after this trip you just told us about?—A. Yes, sir.

Q. When was the next time you went out there?—A. July 2, 1953.

Q. Were you with anyone?—A. No, sir.

Q. How did you reach the plant?—A. I went just like I did before, to the south, went to the west entrance, parked in the parking lot.

Q. Did you see any signs that day?—A. No.

Q. Did you have any leaflets with you that day?—A. Yes, sir. The leaflet was seven-hour day, thirty-five hour week leaflet that I gave that day.

Q. (By Mr. Darby) I hand you General Counsel's Exhibit 3 for identification and ask you to tell us what that is, please.—A. Seven-hour day, thirty-five hour week.

Q. Is that the leaflet you spoke of, of giving out
44 on July 2, 1953?—A. Yes, sure was.

Q. (By Mr. Darby) Where did you stand when you gave the leaflet out?—A. At the west entrance just on the road running north and south in front of the plant where the employees go in.

Q. What did you do with the leaflets there?—A. I gave them to the employees.

Q. Was that in the morning or when?—A. In the morning.

45 Q. (By Mr. Darby) Do you know a person by the name of Earl Dean?—A. Yes, sir, I know Earl Dean.

Q. Did you have occasion to see him on that morning?

—A. Yes, sir.

Q. Do you know who Earl Dean is?—A. He is the watchman.

Q. At the Seamprufe plant?—A. Yes, sir.

Q. Did you have any conversation with Mr. Earl Dean?

—A. Yes, sir, he came out to me and said—

Q. Will you tell us what the conversation was?—A. He came out to me and said, "I'm sorry, but the company doesn't allow no leaflets to be handed out and you have to leave here."

Q. What did you say to Mr. Dean?—A. I said o. k.

Q. What did you do?—A. Stood around.

Q. Then what did you do?—A. Then I left.

Q. By what way did you leave?—A. The same way I came in.

46 Q. Did you return to the plant after July 2, 1953?

—A. I sure did.

Q. When did you go back after that?—A. About July 23.

Q. Did you have anyone with you on that occasion?—A. I sure did. I had Irv Krantz.

Q. Where did you park your car that day?—A. Airport road.

Q. Was that the first time you had parked on the airport road?—A. Yes.

Q. What did you do after you parked on the airport road?—A. We walked to the west entrance to give out our leaflets. We had leaflets that day. And we noticed the police car at the east entrance at the personnel office, so we went up and handed out two leaflets and then came the police car, and he said, "I have two warrants for your arrest." And I said, "What have I did? What have I done?"

47. Q. (By Mr. Darby) What happened that morning?—A. We approached the west entrance; we handed out two leaflets. The city police car was already parked at the east entrance and they drove around and said, "Georgia, we have two warrants for your arrest." I said, "What have I done?" And he said, "You have violated a trespassing ordinance No. 413." I said, "I didn't know you had such an ordinance." They said, "It has just been passed July 21, 1953." So he asked us to go into see Mr. Davis, Chief of Police, and we did.

Q. Don't tell us what happened there, but after you had finished down at the police station, what did you do?—A. Went right back out to the factory.

Q. Did you bring the leaflets back out there with
48 you?—A. Sure did.

Q. And what did you do when you got to the factory on that occasion? First, where did you park your car?
—A. Parked it by the airport road.

Q. And then what did you do after you had parked your car?—A. We walked to the west entrance and they were still going into the plant, the employees. We gave out some more leaflets.

Q. (By Mr. Darby) Is this the first time or second time you were there that morning at 7:10 or 7:15?—A. This is the second time, about 7:15.

Q. (By Mr. Darby) What happened when you— —A. They came back.

Q. Who came back?—A. Mr. Kyle, the city police.

Q. What happened?—A. Said he didn't have no warrants. "We are arresting you again. You have to go back."

Q. And did you go back to the police station?—A. We went back and give them twenty dollars more a piece, cash.

Q. Was there later a trial?—A. Yes, about—

49 Q. Do you recall when that was?—A. About August 3, I presume.

Q. (By Mr. Darby) I hand you General Counsel's Ex-

hibit 4 for identification and ask you what that is?—A. That is the leaflet we gave out the day we were arrested.

50 Q. (By Mr. Darby) Mrs. Sukanis, the documents that you handed out, the leaflets that you handed out to the employees, did they have any writing in ink on top of them?—A. No, sir.

Q. Mrs. Sukanis, did you again return to the Holdenville plant after the day you were arrested twice?—A. Not after the second time.

Q. I mean did you return later?—A. Oh, yes.

Q. When did you go back the next time?—A. I went back September 26. I went at noon.

Q. Maybe you misunderstand—I think you misunderstood the question. After July 2, rather July 23, when did you go back the next time?—A. After I was arrested?

51 Q. Yes, on July 23.—A. I went August 27. I went back to the plant.

Q. Were you with anyone on that day?—A. No.

Q. Where did you park your car?—A. I parked it at the airport road.

Q. And what did you do after you parked it there?—A. I walked to the west entrance.

Q. And what did you do there?—A. I was just saying good-morning to the employees.

Q. Did you have any leaflets with you that day?—A. No, sir.

Q. Tell us what happened while you were there talking to the employees.—A. Well, there wasn't no time that Mr. Nichols or anyone came out to warn me or anything, and the police car came and told me I was arrested again and to report to Mr. Davis, so I went in.

Q. Did the policeman take you down or did you—A. I had my car, so I went in my car down and that was about 7:15, and they wanted me to pay a cash bond. I told them no—

Q. Don't tell us what happened at the police station. Did you go back out there that day?—A. No, sir, I couldn't. They wouldn't let me.

Q. After August 27, when you were arrested, did you later go back out to the Holdenville plant of Seamprufe?—A. I sure did.

Q. When was the next time you went out?—A.
52 September 26.

Q. (By Mr. Darby) Who did you go with, if anyone?
—A. Aletha Covey.

Q. And where did you park?—A. We parked at
53 the airport road.

Q. And what did you do after you parked your car?—A. We got out of the car and went to the west entrance where the employees were coming out for lunch. There was, I'd say, I'd estimate, about 13 came out and went home for lunch.

Q. Did you have any leaflets or anything like that with you?—A. No, sir.

Q. Did you see anyone other than the employees coming out?—A. Yes, sir.

Q. Who else did you see?—A. Bob Nichols.

Q. When did you see Mr. Nichols?—A. He came out the door and came up to me.

Q. Tell us what he said to you there?—A. He says, "Here you are again, Georgia, smiling, you son-of-a-gun. Get out of here, seat, leave."

Q. What did you say to him?—A. I said, "I want you to meet my co-worker, Aletha Covey."

Q. And what did he say?—A. He said, "Seat, get away from here."

Q. Was there any other conversation between the
54 three of you?—A. No.

Q. What did he do then?—A. He turned around and went back in.

Q. And what did you do, what did you and Aletha Covey do?—A. We walked, slowly, very slowly down to my car. I waited about ten minutes, too, before I started, and then here came Mr. Kyle again. He's always after me. He said, "Well, I am not going to arrest you because you are not trespassing, but you have to—"

Q. Don't tell us what happened with Mr. Kyle. Is he the policeman?—A. He is the policeman.

Q. Have you been back to Seamprufe since that time?—
A. Yes, sir.

Q. Passing out leaflets?—A. No, sir.

Q. Have you been on the property since that time?—A. Yes, sir.

Q. When was the last time you were there?—A. October 1, sir.

Q. Where did you park on October 1?—A. Airport road.

Q. What did you do after you had parked there?—A. Walked to the west entrance.

Q. What time of day was this?—A. It was in the morning.

Q. Did you have any leaflets with you that day?—A. No, sir.

Q. What did you do when you got to the west entrance?

—A. Said good-morning to the employees.

Q. What happened while you were there?—A. Bob Nichols, the personnel manager, came out.

Q. What did Mr. Nichols say to you, if anything?—A. He said, "Here you are, Georgia. You are asking for trouble, and you are going to get it. Get the hell away from here."

Q. What did you say to Mr. Nichols?—A. I said, "All right" but I waited a while before I left.

* * * * *

Cross Examination by Mr. Karl Mueller.

56 Q. Mrs. Sukenis, as I understand it, you are employed by the International Ladies' Garment Workers' Union.—A. Yes, sir.

Q. As an organizer.—A. Yes, sir.

Q. And you were so employed on the occasions about which you testified?—A. Yes, sir.

Q. You are not an employee of Seamprufe at Holdenville or anywhere else, are you?—A. No, sir.

Q. And have never been?—A. Never been.

* * * * *

57 ALETHA COVEY, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Darby

Q. By whom are you employed?—A. International Ladies' Garment Workers' Union.

Q. In what position?—A. As a representative.

Q. Do you know Georgia Sukenis, the young lady who just testified?—A. Yes, I do.

Q. Did you ever have occasion to go to the Seamprufe plant in Holdenville, Oklahoma?—A. Yes, I have.

Q. When did you go?—A. The first time I went there was September 26.

Q. Of what year?—A. In '53.

Q. Were you with anyone?—A. I was with Georgia Sukenis.

Q. How did you go out there?—A. In a car.

Q. And where did you park it?—A. On the airport road.

Q. What did you do after you had parked the car?—A. We strode up to the plant, stood there a while and talked, and Georgia talked to someone in a car. Evidently it was a man coming after his wife. And later the bell rang and two or three girls came out and we spoke to them, and Mr. Nichols, I presume that was he, Georgia said it was, came out and got in a conversation with Georgia.

Q. Did you overhear the conversation?—A. Yes, I did.

Q. Will you tell us what he said?—A. He says, "Here you are, you are trespassing, you son-of-a-gun."

Q. (By Mr. Darby) What did Georgia say to him, if anything?—A. She introduced me to him and he told us to seat and get out.

Q. What did you do after he told you that?—A. Well, we stood there and talked a while and meantime he went back into the plant.

Q. And then what did you do?—A. We talked a while. We didn't want the employees to think he ran us off, so we taken our time and went back to the airport road.

Q. What time of day was this?—A. It was noon.

Q. Did you see anyone when you got to the airport road that day?—A. Yes, we met someone.

Q. Who did you meet?—A. Mr. Kyle. He was the policeman. He said he had come in to pick us up.

Q. Were you in the vicinity of the Seamprufe plant on Friday, January 29, 1954?—A. Yes, I was.

Q. How did you go out there?—A. We went in an automobile of Mrs. Sona Williams.

Q. Where did you stop?—A. One tenth of a mile from the stop sign on the airport road.

Q. Did you have occasion to see any signs while you were out there?—A. Plenty of them.

Q. Did you make any notations as to what you saw on them?—A. Yes, I did.

Q. Do you have that with you?—A. I sure do.

Q. Did you have occasion to see any signs on the south-east corner of the property where the airport road intersects the public road that runs north and south?—A. Uh-huh.

Q. (By Mr. Darby). Would you tell us what signs you saw and what if anything you saw?—A. The first sign, in fact there were three in one, and to the left it said "To Employees' Parking Area" and an arrow under that, and over that—

Q. Which way did the arrow point?—A. Up the airport road.

Q. That would be pointing to the west?—A. Yes. Over that had another sign "Cafeteria and Loading Dock," and in the center of that next one is "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc." And the next one next to that is "The William Caplin Plant, Seamprufe, Inc., Administrative and Personnel Offices" and an arrow.

Q. Was there an arrow?—A. An arrow under that pointing back north and over the top of that one is another arrow and has "Shipping Department" pointing back north. All these were in black letters.

Q. These signs you have told us about are all right there on that particular corner?—A. Yes, they are.

Q. Now, did you have occasion to observe the entrance to the employees' parking lot where that road leaves the airport road there on the south of the property?—A. Yes.

Q. Did you observe any signs there?—A. Yes.

Q. What signs did you see there?—A. Well, on the

right side there was a large one, black letters, "One-Way Traffic, Entrance Only. Proceed Straight Ahead and Circle Around Plant to Make Exit From Grounds." A

Q. Was that on the right hand side of the entrance road?

A. Right hand side.

Q. Which way were you facing?—A. We were facing west when we copied these.

Q. The entrance road runs north and south, does it not?—A. North and South.

Q. And that would be on the right hand side of the entrance road, you say?—A. Yes, sir.

Q. But facing the plant when it is on the right hand side?—A. Yes, you could be facing the plant if you were facing west in the car.

Q. All right. And what, if anything, was on the other side of the entrance road?—A. Yes, sir, there was two little signs, one slightly larger than the other.

Q. What did they say?—A. In red letters, "No Trespassing On This Property. The William Caplin Plant, Seampriffe, Inc."

Q. Were there any others?—A. Approximately twelve and a half was another sign, small one, in black letters that said "Private Road."

Q. Approximately how far was the intersection of this private entrance road to the parking lot itself?—A. Off from the airport road?

Q. Yes, from the airport road to the parking lot, going back up this entrance road.—A. Oh, I'd say a good football field, the distance of one.

63 Q. (By Mr. Darby) Did you have occasion to view the exit of the employees, exit road that ran from the employees' parking lot where it intersects the road that runs north and south to the east of the plant?—A. Uh-huh, sure.

Q. Did you see any signs there?—A. Yes, I did.

Q. Will you tell us what those signs said?—A. There happened to be three, sir, little signs situated there. On your left is a small sign saying "Private Road" in black letters. On the right is "One-Way" and has an arrow pointing out. And beyond that is "No Trespassing On

This—"No Trespassing, The William Caplin Plant, Seamprufe, Inc."

64 Q. (By Mr. Darby) Did you see any signs on the east side of the plant near the area that leads to the entrance of the administrative offices?—A. Yes, quite a few small ones, "Do Not Enter," "Do Not Enter," here and there and a large one, "Administrative And Personnel Parking Area."

Q. Did you notice any fences out there?—A. Yes, there is one fence.

Q. And where is it located?—A. It runs there on the east side down to the airport road.

Q. Does it have any openings in it?—A. There at the plant and up at the road.

Q. What kind of fence is it?—A. It is like a plain old wire fence.

Q. What time was it that you got out there to the plant on?—A. I didn't have a watch on, so I'd say it was around 4:00 o'clock.

Trial Examiner Sahm: That was the second time on January 29?

65 The Witness: Uh-huh, yes.

Q. (By Mr. Darby) Did you have occasion to see whether any cars went in or out while you were there?—A. Yes.

Q. Where were you located while you were watching cars going in and out?—A. Probably one tenth of a mile from the first sign.

Q. All right. What sign would that be?—A. That was the three corner signs.

Q. Approximately—A. Up at this end.

Q. What road were you on?—A. Airport road.

Q. You were on the airport road?—A. Uh-huh.

Q. Do you know approximately how far it is there at the airport road to the northeast exit road from the employees' parking lot where the northeast exit road intersects the road that runs north and south, the public road?

—A. Approximately two tenths of a mile.

Q. Now, how many cars did you see going into the employees' parking lot while you were there on that Friday afternoon?—A. Twenty-five.

Q. Did you see any cars leave by that way?—A. Yes, sir.

Q. How many?—A. Seventy-eight left that way.

66 Q. Now, do you mean the seventy-eight cars came out of the parking lot the same way that the twenty-five had gone in?—A. I won't say all the twenty-five went in that way. Some of them were divided and went in as they should go in, the entrance, but there were two made an exit from the entrance and went west toward the airport.

Q. The two cars that made an exit, did they leave the company property and go directly on to the airport road?—A. Yes, sir.

Q. And they left by what is known as the entrance on the south side?—A. That's right.

Q. Two of the cars did and they turned west toward the airport?—A. That's right.

Q. Now, where did the other cars come out?—A. They came out on the, from the exit up on the northeast corner and came out south and all turned toward Holdenville.

Q. Did you observe at what speed these cars were going as they came out of the plant or the company property?—

A. From the exit, I'd say about five and ten mile an hour.

Q. Approximately how far apart were they?—A. Bumper to bumper. On many occasions, you know, as they strangled out, there would be approximately a car length between them.

Q. Were any of these closer than that together?

67 —A. Yes, sir, when they were rushing out there.

Q. Did you notice whether any of these cars stopped on the public road?—A. None of them did. They kept going.

Q. Did you have occasion to count the number of people that were in the cars?—A. Yes, I did.

Q. How many people were in them?—A. 225.

Q. Did you make any notes at that time?—A. Sure did.

Q. Do you have those notes with you?—A. Sure do.

Q. Did you see any buses out there?—A. No, I didn't.

Q. Did you see any taxi cabs?—A. I seen one taxi cab in the vicinity, but it was empty when it came that way and

evidently didn't pick up a fare because it was empty when it went back.

Q. Approximately how long did it take for these cars to leave after they first began leaving the property?—A. I'd say around, oh, ten minutes.

Q. Did you have occasion to see whether or not there was a stop sign at the exit of the parking lot where the exit road intersects the road running north and situated in front of the plant?—A. I didn't see any.

68 Trial Examiner Sahm: That is private road, isn't it?

Mr. Darby: Yes, sir, I understand it is a private road. I don't know whether it has a stop sign or not. I wanted the record to show whether it did or not.

Q. (By Mr. Darby) Had there been a stop sign there, do you think you would have seen it?—A. Certainly.

* * * * *

Cross Examination by Mr. Karl Mueller.

* * * * *

70 Q. Yes, ma'am. Now, the first sign was at the southeast corner of the property right there at the corner of the fence, wasn't it?—A. Yes.

Q. And then you proceeded from that point in a westerly direction along the airport road about a tenth of a mile before you stopped and parked?—A. We parked facing the east when we counted.

Q. You went down, then, I suppose, and turned around, did you not?—A. Turned around, yes.

Q. And came back to a point a tenth of a mile west of the southeast corner of the plant property?—A. Right.

Q. You measured that on the speedometer of the car, didn't you, so you would be able to testify with accuracy?—A. Yes.

71 Q. Now, during the entire time that you were parked there on that occasion, your car was parked on the airport road facing toward the east?—A. Right.

* * * * *

Q. I believe your testimony was that twenty-five cars drove into the private road off of the airport road.—A. That's right.

Q. Did all of them pass you traveling in a westerly direction on the airport road and then turn to their right into the private road where it leads up to the entrance or, rather, the employees' parking lot or did some come from the other direction traveling in an easterly direction toward where you were parking or parked?—A. Well, when we first parked, we parked up beyond the entrance and we watched them come in that way. Then we moved down.

Q. Oh, you shifted your position while you were there?—A. Certainly.

72 Q. The first place you parked, as I understand it, was on the airport road somewhere west of the intersection of the private road and the airport road.—A. That's right.

Q. So that you could observe that intersection.—A. That's right.

Q. You were at that time parked so that you were faced in an easterly direction?—A. That's right.

Q. And you stayed there until you had observed
73 the twenty-five cars go in?—A. That's right.

Q. You couldn't observe what was going on up at the northeast corner of the plant property, could you?—A. Not where we were parked first. That's why we parked down closer so we could observe.

Q. And the point at which you parked the second time was the point that was one tenth of a mile?—A. That's right.

Q. West on the airport road from the southeast corner of the plant property?—A. That's right.

Q. Now, is it your testimony that seventy-eight cars left the plant property via the private road up near the northeast corner of the plant property?—A. That's right.

Q. And those cars then turned to their right so as to travel in a southerly direction along the public road that runs along the front side of the plant property?—A. That's right.

Q. And at your vantage point a tenth of a mile away, you counted the people in each of those cars as they left?—A. That's right.

Q. And you found 225 people in 78 cars; is that right?

A. Well, we had two more cars that went out west.

Q. When was it that you got out there, do you recall?

A. Around 4:00 o'clock.

Q. Yes. And you left about when, do you recall?—A. About fifteen until 5:00, because we stayed there a little while after they had all left. In fact, there were about six cars still left on the parking lot at the employees' entrance.

Q. Did you count the number of cars on the parking lot while you were out there waiting for something to happen?—A. No, I didn't.

Q. You are employed as an organizer by the union, 75 are you not?—A. Yes, sir.

Q. Have you ever been employed by Seamprufe at the Holdenville plant?—A. No, sir.

Q. How long had you been an organizer for the union prior to this occasion on September 26, 1953, when you and Georgia went out to the Holdenville plant?—A. September 14 or 15; if that fell on Monday, it was, that's when I was first hired.

Q. And you had been employed in that company— 76 or in that capacity continuously since then?—A. That's right.

Q. As a full-time job?—A. It is a full-time job.

Redirect Examination by Mr. Darby.

Q. When you parked on the airport road when you observed these automobiles leaving the plant, were you closer to the public road that ran north and south on the east side of the plant or were you closer to the private road on the west side of the plant that led to the employees' parking lot?—A. We were closer to the public road. 77

Q. From the place where you were parked, could you observe the private road that runs into the north and south public road at the northeast corner of the property?—A. Yes, we could.

Recross Examination by Mr. Karl Mueller.

Q. How far away was that point from where you were sitting, this point where you saw the cars coming out from the north side of the plant?—A. To the exit?

Q. Yes, ma'am, where you saw the seventy-eight cars come out. You didn't clock that on your speedometer?—A. Sure did.

Q. Did you?—A. Two tenths of a mile.

Q. Two tenths of a mile. Now, I assume by the testimony that you have just given that the distance you are describing you measured when you left that northeast corner up there and drove down the public road to the southeast corner, turned and went in a westerly direction to the point at which you were parked; is that right?—A. I started clocking there at the southeast corner and clocked to the exit.

Q. Oh. You started at the southeast corner and drove up the public road from that point to the point at which the private road intersects?—A. That's right.

Q. With the public road. And that's two tenths of a mile?—A. It is.

Q. I see. And then you were parked a tenth of a mile west of that corner?—A. I was.

Q. I see.

Trial Examiner Sahm: That makes that block—is it a block? It's hard for me to visualize. I have never been out there, of course. That makes the frontage of that property where the block is, on the south side then three tenths of a mile according to her testimony; am I correct?

Mr. Karl Mueller: No, I don't think you are, Mr. Examiner. Actually it is acreage. Isn't as developed as city property in blocks.

The Witness: It is sitting out in a corn field.

Mr. Karl Mueller: There are twenty-five acres.

Mr. Morris: If counsel has a plat, I think maybe we could save a lot of confusion if we had perhaps introduced the

plat a little bit earlier and testified with reference
80 to it.

Trial Examiner Sahn: Yes, it would have been a help to me. It would have helped me considerably, although I have a rough draft here which I am trying to follow myself. Very well. Any further questions?

Mr. Darby: I am going to ask the reporter to mark as General Counsel's Exhibit 5 a plat.

81 Mr. Karl Mueller: Without any intention of interfering, if you would like to offer, we will stipulate with you that it does correctly reflect the facts as they exist in the ground out there. That was prepared by an engineer and surveyor for the company.

Mr. Darby: I will offer General Counsel's Exhibit 5 and so stipulate that it shows what it purports to show, and at this time I would like to ask that I be allowed to withdraw the original and return it to the respondent and have two photostats remain in evidence, and the reporter, I understand, will take care of that part for me.

Further Redirect Examination by Mr. Darby.

Q. Now, Mrs. Covey, will you show me the plant that you pointed out? Will you point out the airport road? Now, will you take a pencil and make a mark on the airport road where you were when you observed the cars leaving at the northeast road?—A. Approximately right here.

82 Trial Examiner Sahn: Suppose you mark that with the letter "X". The witness is marking on General Counsel's Exhibit No. 5 the letter "X" in answer to that last question.

Further Recross Examination by Mr. Karl Mueller.

Q. Now, referring to General Counsel's Exhibit 5, you have marked an "X" on that plat which is west of the southeast corner of the plant property, is it not?—A. Yes, it is.

Q. And that's the point that was a tenth of a mile west of the southeast corner of the plant property?—A. Yes.

Trial Examiner Sahm: Just one question I want to ask you. You testified, did you not, that you saw twenty-five cars coming into this lot?

The Witness: Yes, sir.

Trial Examiner Sahm: Now, what time of the day was that?

The Witness: It was around fifteen after 4:00.

Trial Examiner Sahm: And then how long after that did you observe the approximate 78 cars coming out?

83 The Witness: Well, we started clocking them, and I imagine that they clocked out of work about 4:30, just the same as we do at McAlester.

Mr. Darby: I don't know why they were there, but I assume they came to pick people up getting off from work. I don't know anybody that does know.

Trial Examiner Sahm: The first thought that came to my mind, is there another shift coming to work at that time?

Mr. Darby: There is only one shift so far as I know. Could we have a stipulation to that effect, if that is correct?

Mr. Karl Mueller: Just one shift; that is right.

84 Q. (By Mr. Karl Mueller) While you were out there casing that part of the country for signs—I didn't mean any disrespect, I mean observing, did you happen to see that little sign off there to the left as you are going west on the airport road? It's on the property right across the airport road from the plant property, a little sign in red, and it reads, "Private Road, Keep Out," and that road runs off toward one of the hangars there on the airport property. Did you observe that?—A. Yes, I observed that.

Q. Did you notice whether or not the no trespassing sign up there near the northeast corner of the plant property had

the same legend on it, the same wording, the same color lettering as was situated down there by the private road off the airport road?—A. I observed that this afternoon and yesterday, I mean Friday, but I didn't believe that was the Seamprufe property out there on the airport road.

Q. Oh, excuse me. I am talking about another sign. I am not talking about the little sign across from our property where it says "Private Road, Keep Out." That isn't our property and isn't our sign. I was back now to asking you about the no trespassing signs that were lettered in red over on our property. There is one just off the airport road, is there not, near the south boundary line of the plant property. You told us about that, what it says, you read that. "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc." Is that right?—A. That is right.

Q. Now, isn't the lettering on the no trespassing sign up by the northeast corner where the private road intersects with the public road that runs in front of the plant, isn't that the same sign, doesn't it say exactly the same thing, painted in red, "No Trespassing On This Property, The William Caplin Plant, Seamprufe, Inc.?"—A. I don't know, because I didn't have it in red letters down there, but I did copy the same—it is the same wording, still read the same way.

Mr. Darby: At this time I would like to offer General Counsel's Exhibit 2 and General Counsel's Exhibit 4 in evidence. General Counsel's Exhibit 2 is the court record that is signed by the court reporter of that proceeding, and General Counsel's Exhibit 4 is the leaflet that was passed out on July 2 or July 23, I am not sure.

Trial Examiner Sahm: Well, first, General Counsel's Exhibit No. 2 is what purports to be a transcript of testimony from the municipal court of the City of Holdenville, State of Oklahoma. Is there any objection to that.
86 Mr. Mueller?

Mr. Karl Mueller: We make the same objection that we made this morning. It's incompetent, irrelevant and imma-

terial to any issue in the case, no proper predicate has been laid for its introduction or receipt in evidence. It involves a proceeding to which the company was not a party. It appears to cover proceedings had in connection with a proceeding in the municipal court brought by the city.

Trial Examiner Sahm: The company was the prosecutor, were they not?

Mr. Karl Mueller: Beg pardon?

Trial Examiner Sahm: Was not the company the prosecutor in the sense that they swore out the warrants?

Mr. Karl Mueller: Oh, no, sir; all those records are right next door to us in the clerk's office here. The proceedings apparently were for an alleged violation of Ordinance No. 413 as brought by the police officers of the city, the arrest made under warrant issued by the corporation judge, municipal judge, the case was presented by the city attorney in behalf of the city, all of which would become apparent if we made the entire record in the proceeding a part of the record here, and that goes to another ground of our objection. The transcript is fragmentary and incomplete. If, we think, if the entire record were made a part of this record that what was said and done there would be in no sense binding upon the respondent, and that no findings or conclusions could be made therefrom or based thereon in connection with

87 this proceeding.

Trial Examiner Sahm: Would you object to the admission of this exhibit if its use was to be limited merely to showing that the parties were arrested?

Mr. Darby: I don't offer it for that purpose, Mr. Examiner.

Trial Examiner Sahm: I know you don't. But I can't limit you in any way which you offer it. I just want to find out Mr. Mueller's theory here, understand the argument.

Mr. Karl Mueller: Well, I don't know that that in and of itself would constitute competent evidence of the arrest. I think the witness has testified that she was arrested. And from what I saw in the clerk's office yesterday for the first time, there is a warrant there that as a part of the papers on

appeal, the defendant in that proceeding, as the record would indicate, offered no evidence or testimony in their own behalf, were found guilty and appealed to the county court of Hughes County, and that is where we saw the warrant that appears to be a part of the official papers in four cases that are on appeal.

The warrant contains, I think, in either case, contains a return which indicates that an arrest was made. Frankly, we don't know. We have no reason to question that, but we can stipulate, I think, that the warrants issued in those cases by the municipal judge have returns on them indicating that the persons for whom they were issued were arrested.

88 Trial Examiner Sahm: Do I understand that these warrants were issued on the information of the judge here?

Mr. Karl Mueller: No, it is my information that Mr. Davis is Chief of Police in Holdenville; isn't that right?

Mr. Bob Nichols: Yes.

Mr. Karl Mueller: And the complaints in each case appear to have been sworn out by the Chief of Police and warrant issued by the Municipal Judge based presumably on the complaint, and then the warrants executed, I think, in each case; I could be mistaken, but my recollection is that Officer Kyle, police officer of the City of Holdenville, served the warrants and made the arrests.

Trial Examiner Sahm: I'd like to hear your position on that.

Mr. Darby: May the Examiner please, the document is offered to show certain admissions on the part of respondent's employees, particularly Mr. Nichols, the personnel manager. For instance, I would like to refer you to page 8 thereof, the third question, and they are referring there to July 23, "Were the policemen called at your instruction?" And Mr. Nichols' answer is "Yes".

Mr. Karl Mueller: That is an odd way to make that character of proof. Mr. Nichols is in the hearing room. We will stipulate, as far as that goes, there isn't any secret about it at all, we found trespassers on our property and

they declined to leave, as the record now shows with abundant clarity, and management had one of the persons summon the officers. What the officers did from there on, of course, was a matter of their official conduct and none of ours.

93 Trial Examiner Sahm: It is your contention, as a substantive matter of law, that the respondent had no right to post his property or to put it another way, to prevent the union representatives from coming onto their property to distribute union literature.

Mr. Darby: That is exactly my contention, that when they did, they violated Section 8 (a) (1) of the National Labor Relations Act when they made that rule.

Trial Examiner Sahm: Notwithstanding any ordinance of the city to the contrary?

Mr. Darby: Notwithstanding any number of ordinances.

Trial Examiner Sahm: Well, since General Counsel's Exhibit No. 2 has been offered and objection has been made, I am going to reserve ruling on it. I will dispose of it in my intermediate report.

98 Mr. Darby: It is hereby stipulated and agreed that during the calendar year 1953, the Seamprufe Holdenville plant employed approximately 200 employees, of which two thirds resided in Holdenville, the remaining one third residing in communities around Holdenville, the majority of this remaining one third living within communities within five and ten miles of Holdenville, the remaining and few exception living up to a distance of thirty miles from Holdenville.

Mr. Karl Mueller: We so stipulate.

99 In a discussion off-the-record here, the counsel for the respondent stated that his answer or its answer admits the jurisdictional averments of the complaint, and the facts stated therein, and also the averment in the com-

plaint to the effect that the charging union is a union within the meaning of the Act. Am I correct in that, Mr. Mueller?

Mr. Karl Mueller: You are, Mr. Examiner.

Trial Examiner Sahm: Very well, it will be so stipulated in the record.

100 Mr. Karl Mueller: Yes, sir. At this time the respondent moves to dismiss the complaint insofar as it alleges the Commission of unfair labor practices of the respondent for the reasons that said allegations are not supported by substantial evidence, the General Counsel not having met the burden that is his with respect thereto.

Trial Examiner Sahm: The motion is denied. Exception noted.

Mr. Karl Mueller: Respondent now moves to dismiss each of the allegations set forth in Paragraph No. 5 of the complaint for the reason that said allegations are not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

101 Mr. Karl Mueller: Thank you, sir.

Respondent respectfully moves the Examiner to dismiss Paragraph No. 5 of the complaint for the reason that if the allegations therein contained are true, which is not admitted, same would not constitute a violation of the National Labor Relations Act as amended under the undisputed evidence of the case.

Trial Examiner Sahm: * * * The motion is denied. Exception noted.

Mr. Karl Mueller: Yes, we are familiar with it in a general way.

Respondent now moves the Examiner to dismiss the allegations, and each of them, set forth in Paragraph No. 6 of the complaint for the reason that said allegations are not supported by substantial evidence.

102 Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent now moves the Examiner to dismiss the allegations, and each of them, set out in Paragraph No. 7 of the complaint as to each of the dates therein alleged, to wit, August 27, September 25 and September 30, 1953, as to, one, distributing literature, two, soliciting union membership, three, soliciting union authorization, severally, if we may, for the reason that one of said allegations is supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent now moves the Examiner to dismiss the allegations set out in Paragraph No. 8 of the complaint wherein it is alleged in substance that on or about July 2, 1953, the respondent by and through Earl Dean attempted to prevent union officials from distributing union literature for the reasons that said allegation is not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: We make that same motion, if we may, so as to save time and record with respect to, July 23 and August 27, 1953.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: And if we may, in this fashion, make the same motion with respect to each of the three dates alleged insofar as it relates to the solicitation of union membership and as to the solicitation of union authorization, all as is set out in Paragraph No. 8 of the complaint so as to obviate the necessity of making the same motion as to each offense as to each alleged offense under each case.

103 Trial Examiner Sahm: Very well. Same ruling.

Mr. Karl Mueller: The respondent also respectfully moves the Examiner to dismiss the allegations and each of them set out in Paragraph No. 10 in the complaint as to each of the two dates therein set out insofar as each relates to Robert Nichols and Earl Dean, severally, for the reason that said allegations are not supported by substantial evidence.

Trial Examiner Sahm: Motion denied. Exception noted.

Mr. Karl Mueller: Respondent also respectfully moves

the Examiner to dismiss the allegations and each of them set out in Paragraphs Nos. 11, 12 and 13 of the complaint, respectfully, for the reason that said allegations are not supported by substantial evidence.

U Trial Examiner Sahm: Motion denied. Exception is noted.

104 Mr. Karl Mueller: Mr. Examiner, it is stipulated and agreed by and between counsel in this proceeding that Ordinance No. 413 of the City of Holdenville, Oklahoma, passed and approved July 21, 1953, reads as follows:

"An ordinance defining trespass, providing the penalties therefor, and declaring an emergency;

"Be it ordained by the mayor and councilmen of the City of Holdenville, Oklahoma, in regular session assembled:

"Section 1. Trespass, as used in this ordinance, shall include going upon, or occupying any public or private property or entrances thereto without the express or implied consent of the owner, lessee or custodian.

"Section 2. It shall be an offense for any person to trespass upon, or enter upon any public or private property, within the City of Holdenville, Oklahoma, against the wishes or consent of the owner, lessee, custodian, or the person rightfully in possession thereof.

"Section 3. Any person convicted of the offense of trespass as defined herein, shall upon conviction, be fined in any sum, including cost, or not to exceed \$20.00, but, each day such offense may be committed shall constitute a separate offense.

"Section 4. All ordinances, or parts thereof, in conflict herewith are hereby repealed.

"Section 5. By reason of public peace, health and safety of the inhabitants of the City of Holdenville, Oklahoma, an emergency is hereby declared to exist, by reason
105 whereof, this ordinance shall be in full force and effect from and after its passage, approval and publication.

"Passed and approved, this, the 21st day of July, 1953."

Trial Examiner Sahm: Is that stipulation agreeable to you?

Mr. Darby: So stipulated. I would like, with the reservation that by stipulation we don't deem that the contents of the ordinance are relevant. Our proposition in that respect was that it was the company who caused the arrest, whatever it caused the arrest under.

Mr. Karl Mueller: As the result of our off-the-record discussion, Mr. Examiner, may we propose the following stipulation.

It is hereby stipulated and agreed by and between the attorneys for the parties in this proceeding, in the event the transcript proffered by General Counsel as his Exhibit No. 2 is received in evidence, that in each of the four cases tried on August 3, 1953, the proceedings in that respect being set out in General Counsel's Exhibit 2 for identification, the complaint was made in writing by Mr. Davis, Chief of Police of the City of Holdenville, and that in each of those cases, a warrant based on the complaint was issued by Mr. Beasley, the Municipal Judge of the City of Holdenville.

106 Trial Examiner Sahm: Very well. Is that agreeable?

Mr. Darby: It is so stipulated.

Mr. Karl Mueller: No; we would prefer to submit a brief if we may. Before we leave the record, may we at this time renew each of the motions that we made at the conclusion of the General Counsel's case in chief.

Trial Examiner Sahm: Very well. And the same ruling.

111 (Whereupon, at 3:45 o'clock p. m., the hearing in the above-entitled matter was closed.)

General Counsel's Exhibits

[General Counsel's exhibit 1-A, charge against employer, is printed at page 56]

[General Counsel's exhibit 1-D, complaint, is printed on page 6.]

[General Counsel's exhibit 1-F, answer is printed on page 9.]

General Counsel's Exhibit 2.

In the Municipal Court of the city of Holdenville, State of Oklahoma. City of Holdenville, Plaintiff, vs. Irving Krantz and Georgia Sukenis. Appealed to County Court No. 4515

Before: The Honorable W. G. Beasley, Justice of the Peace in and for Holdenville District.

Date: August 3, 1953.

Appearances: C. H. Baskin, City Attorney, Holdenville, Oklahoma. Charles J. Morris, of the firm of Mullinax & Wells, Attorneys-at-law, 1716 Jackson Street, Dallas 1, Texas; and Gene Stipes, Attorney-at-law, McAlester, Oklahoma; representing the Defendants.

Transcript of Testimony.

Charles J. Morris, attorney for the Defense, speaks: "Judge, I respectfully ask leave to be allowed to try this case in your Court—in this Oklahoma Court."

C. H. Baskin: I think he should be extended the courtesy. I move that he be allowed to try this case.

The Mayor: I second the motion.

The Judge: Allowed.

Whereupon, the witnesses are sworn.

Re E. NICHOLS takes the stand to testify.

Direct Examination by C. H. Baskin, City Attorney.

Q. Are you connected with the *Seamproof* company here at Holdenville, the plant here at Holdenville?—A. Yes, sir.

Q. In what capacity?—A. Plant manager.

Q. As plant manager, do you have charge of the plant here at Holdenville?—A. Yes, sir.

Q. Is Earl Dean connected with your plant?—A. Yes, he is.

Q. Do you know the two (2) defendants here (indicates the defendants), by face, if not by name?—A. Yes, sir.

Q. Have you seen them on the premises of *Seamproof, Incorporated*, recently?—A. Yes, sir.

(Here a discussion is had, as to whether the two charges made against the defendants might be consolidated; and the decision was reached. Mr. Baskin made the stipulation):

“It is stipulated, that the charges of *trespassing* filed against the defendants on July 25th and the charge filed on July 30th, are consolidated for the purpose of this trial.”

Q. Mr. Nichols, the two defendants, Mr. Krantz and Mrs. Sukenis, had been around your plant, had they, prior to July 25th?—A. Oh, yes.

Q. State whether or not you had requested them not to come about your place?—A. They had been given to understand that they were *trespassing*, and had been asked to get off the property.

Q. Do you have a lease?—A. Yes, we do.

Q. And that lease is of record?—A. Yes, it is.

Q. And were they on that property that you leased from the city?—A. Yes, sir.

Cross Examination by Charles J. Morris.

Q. Now you testified on direct examination that some conversation that you had, I believe you said on July 23rd, with the two defendants—were they on the *Seamproof* property?—A. Yes, sir.

Q. Did you have any conversation with them at that time?—A. Just a brief word or two.

Q. What was that brief word or two?—A. I don't remember the exact words.

Q. What was that in substance?—A. Possibly, “You are

trespassing", or something like that, and I turned to the policeman—

Q. Were the policemen there?—A. Yes, sir.

Q. Had you called them?—A. No.

Q. Were the policemen called at your instruction?—A. Yes.

Q. Were they called that day?—A. I don't know.

Q. Did you instruct them to call that day?—A. No, I did not. I gave instructions earlier—they may have called that morning.

Q. When did you give those instructions—that day?—A. No.

Q. Now, did you have any other conversation with the defendants before July 23rd?—A. Once before.

Q. When was that?—A. Once before in the area, somewhere.

Q. Who was present that time?—A. Just myself.

Q. And both defendants?—A. No, just Mr. Krantz.

Q. What did you tell him?—A. That he was trespassing, and asked him to get off.

Q. Those were the only two occasions that you talked with the defendants?—A. That's right.

Another witness for the plaintiff municipality, EARL DEAN, takes the stand.

Direct Examination by C. H. Baskin.

Q. State your name to the Court.—A. What's that?

Q. What is your name?—A. Earl Dean.

Q. Are you an employee of *Seamproof*, Incorporated?—

A. Yes, sir.

Q. And were you, before July 24th, this year?—A. Yes, sir.

Q. Do you know the defendants, here—Mr. Krantz and Mrs. Sukenis?—A. I know them more by seeing them than I do by name.

Q. Have you seen them on the *Seamproof* premises, on the 24th and 30th of July?—A. I would say 23rd and 24th—generally on Thursday—23rd and 24th, and I would say the 30th.

Q. Did you talk to them?—A. I talked to them on the 23rd.

Q. Did you ask them to leave the premises?—A. Yes, sir.

Morris: I object to the questions as leading.

Q. (Baskin). What did you say?—A. I told them that the orders were given to me that no one should trespass, that since the orders were given to me that way they would have to leave.

Q. Did you call the police?—A. I told them to leave, and I called the police.

Q. When were you so instructed to ask them to leave?—A. I would say sixty days or more.

Q. Were you instructed each day?—A. No I didn't, but I had seen them and asked them to leave—I was told to ask them to leave, "anybody that you may see—anybody carrying papers—grocerymen putting out bills—any kind of bills, ask them to leave". He said that, to ask them to leave.

Q. Who is "he"?—A. Mr. Hayden. The man that gave me the instructions.

Q. When you got your instructions from Mr. Hayden about trespassing, did he say anything about where people were standing?—A. He said they should get off of their lease—it goes out where the road goes up to the airport, which is 150 or 200 yards away, he said they had no lease out there and it was none of their business who was out there or what they did.

Q. In other words, Mr. Dean, Mr. Hayden told you that these union representatives should not be allowed to pass out their bills on company property, is that right?—A. What he told me, he said any grocery boy, any insurance man of any kind, with circulars of any kind whatever, or anybody not working there, to ask them to leave. He didn't say any special persons. There had been a *grocer* store boy handing out circulars. They were asked to leave.

Q. Did you call the police to ask them to leave?—A. They generally came out there at evening when I was not there. He said that the women had their cars parked there.

and that we would be responsible if anything happened to be misplaced.

Q. He didn't say anything about Unions?—A. No, sir. He didn't say anything about any special persons.

Q. You still say he didn't say anything about the Unions?—A. No, the only thing he said was about handing out circulars—he said the people were not to put papers in the women's road, where they come out to work.

Another Witness, Roy Cook, the City Mayor, takes the stand, having been sworn.

Direct Examination by Mr. Baskin.

Q. Your name is Roy Cook?—A. Yes, sir.

Q. What official capacity do you hold in Holdenville?—

A. Mayor.

* * * * *

Q. (Morris) Mr. Cook, if these two people were picked up, did you have a conversation with Georgia Sukinis, here (motions to her)?—A. After they were picked up?

Q. Was it you who talked to them?—A. She and this other fellow came in and talked with Earl Roberts—

Q. Could you name the substance of that conversation?—

A. They seemed to think that they had been treated dirty, and he told them that we didn't want them to bother the *Seamproof*.

Q. (Baskin) Now, what would that have to do with either convicting or clearing these people?

Morris: Rephrase the question, please.

A little discussion was had off the record.

Morris: Would that signify why the ordinance was passed?

A. (Cook) Yes.

Q. What did you tell them was the reason?—A. To keep anybody from trespassing.

Q. At this plant?—A. Yes.

Q. Did you tell them that? You told them why this was done?—A. No, I don't know as I said why. I told them that we didn't want them messing our *Seamproof* up. I said

something about the law, and I said, "You will have to talk to our City Attorney".

Q. Did he write the Ordinance?—A. I suppose he did.

Q. Did you request that he write the Ordinance?—A. Well, the City Attorney and myself talked about getting this Ordinance, and he wrote one and we passed it.

Q. You told him you wanted an ordinance to keep people from trespassing at the *Seamproof*?—A. Well, that's what we wanted to do.

Baskin: We didn't say Union, we said "anybody".

Morris: I didn't say anything about the Union.

(Resumes questioning.)

Q. If I understood your answer, the purpose of this Ordinance when you talked to the City Attorney, was to keep people from trespassing out at the *Seamproof*?—A. Well, any of the City Property.

Q. What other property did you mean?—A. Well—that's what we meant.

Certificate of Reporter.

I, Martha H. Rogers, the duly appointed and acting County Court Reporter of Hughes County, Oklahoma, do certify that I was engaged to take the testimony and proceedings in the above and foregoing Municipal hearing, before the Honorable Judge Beasley, Justice of the Peace of Holdenville District, Holdenville, Oklahoma; and that I took in shorthand all the testimony and proceeding had and heard on August 3, 1953; and that I thereafter reduced my shorthand notes to longhand, and that the above and foregoing is a true, correct and complete transcript to the best of my knowledge and belief.

Witness my hand this 20th day of August, 1953.

MARTHA H. ROGERS,
County Court Reporter.

General Counsel's Exhibit 3.

dictated by: M.P.

June 3, 1953

July 2, 1935—Thursday—Holdenville.

Today 8 Hours

Tomorrow 7 Hours

Seven Hour Day

Thirty-five Hour Week.

At the National Convention of the International Ladies' Garment Worker's Union, held recently in Chicago, a resolution was unanimously adopted by the representatives of 450,000 garment workers for the introduction of the seven-hour work day and thirty-five hour work week (from Monday to Friday inclusive) in all shops of the women's garment industry.

In the Cloak and in the Silk Dress trade, and in a number of other branches of the women's garment industry, the workers have been enjoying the seven hour day and thirty-five hour week for some years. Now the time has come when the thirty-five hour work week should—and will—be extended to all other branches and shops in the garment industry.

At the Seamprufe plants in McAlester and Holdenville, Oklahoma, and in all of the shops in the states of Texas, Arkansas, etc., the top wages most workers are receiving for forty hours are very low. These workers will therefore have to receive general cost of living wage increases, plus the thirty-five hour work week.

The garment workers who will soon go on a seven-hour day or thirty-five hour week, (and that applies to workers employed on women's garments everywhere in the United States as well as in the Dominion of Canada) must receive for the thirty-five hours—pay amounting to: not less than the pay they have previously received for forty-hours work.

In relation with the shorter work week, those of the workers who will soon enjoy the thirty-five hour week should do some thinking of the people who were the first to go on the picket lines for the thirty-five hour work week. Those were

the New York Waist Makers; followed later by New York, Philadelphia, Chicago, Cleveland cloakmakers and dressmakers, and still later by Boston, St. Louis, and other cloak and dressmakers.

Now—over forty years later, all other workers employed in the women's garment industry are set to establish and enjoy the seven-hour day, the thirty-five hour week in all shops of the women's garment industry.

Why a Thirty-Five Hour Week?

The result of a shorter work week is a longer life. People—workers—began enjoying a longer span of life because of the shorter work day and the shorter work week.

To continue expanding our span of life, the seven-hour work day and thirty-five hour work week should be established in the entire women's garment industry, and later, in other industries as well.

Employers in general, and particularly non-union employers, do not like the idea of a shorter work week, but the happy results the shorter work day and shorter work week bring to the workers and their families and to the people in general, must and should be the determining factor in the situation.

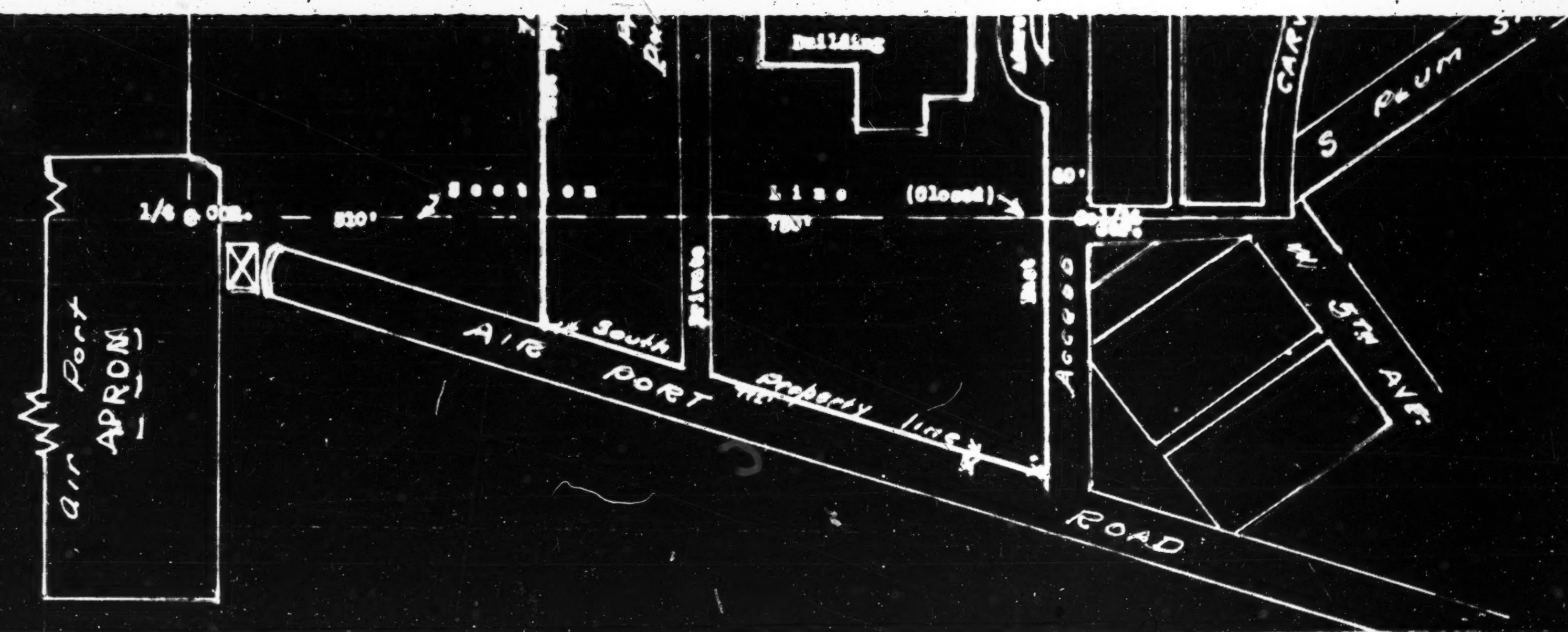
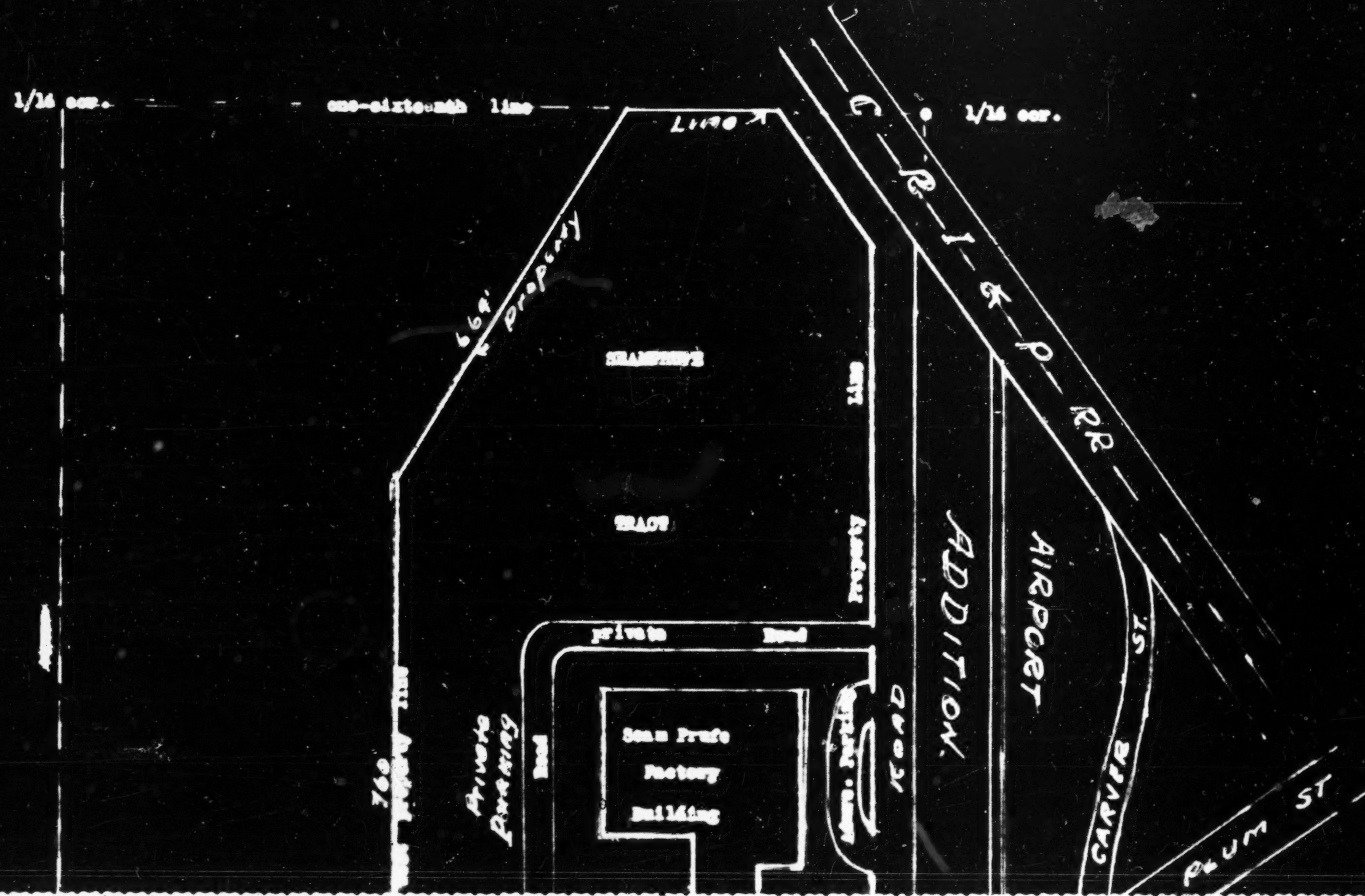
Southwestern Regional Office
International Ladies' Garment Workers' Union
American Federation of Labor

National Office—I.L.G.W.U., 1710 Broadway, New York, N.Y.
Southwest Regional Office, 110 North 9th, St. Louis, Mo.

PLAT

General Counsel's Exhibit 5

R 54 SE. Sec 12 & 1/2 NW NE Sec 13. T 7 N R 8 E



The above and foregoing is a true and correct plat of the Seam Prufe Tract (City of Holdenville, Oklahoma) the same being situated in a part of the Southwest quarter (SW_{1/4}) of the Southeast quarter (SE_{1/4}) of Section Twelve and a part of the East one-half (E_{1/2}) of the Northwest quarter (NW_{1/4}) of the Northeast quarter (NE_{1/4}) of Section Thirteen (13), Township Seven (7) North Range Eight (8) East Hughes county, Oklahoma, and it accurately shows the location of the buildings upon the said premises and also the location of Private Roads upon the same.

Witness my hand and seal this the 25th. day of August 1933.

Webb F. Huns
Webb F. Huns, County Surveyor.



005

General Counsel's Exhibit 4

THE SOUTHWEST ILGWU DELEGATION DEMONSTRATES FOR PROTECTION OF HUMAN RIGHTS AND HUMAN SPIRIT OF SEAMPRUFE WORKERS



The Southwest delegation to the recent convention of the ILGWU demonstrate their determination to help Seamprufe's workers secure recognition of the rights and freedom due them as citizens of the U. S. A. The group followed the delegation of Local 384, McAlester, Oklahoma. MONA WALKER, golden voice from OKLAHOMA, is singing a song of freedom.

THE HARDSHIPS OF SEAMPRUFE, INC. WORKERS AT THE CONVENTION OF THE ILGWU . . .

MUSIC, TEARS, AND DEMONSTRATION STARTED THE SESSION ON WEDNESDAY, MAY 20, 1953.

President David Dubinsky opens the session with the following statement:

"We have the Southwest department waiting! Instead of my telling you their troubles, I will let the director of this department speak to you in his own way. The director, whom you all know well, has given many years of devoted service to organize thousands and thousands of workers. He has fought many battles.

The manufacturers can't defeat Meyer Perlstein. He might lose an NLRB election and even a strike, but you can be sure that he will not give up anything he undertakes. That is one of the reasons he is to make the report. He is involved in a serious battle. I am glad we are able to give him inspiration and encouragement. I now present Vice Pres. Meyer Perlstein."

Vice President Perlstein comes up to the platform and addresses the convention. He states, pointing a finger to the Southwest group . . .

"Here come the garment workers, members of the ILGWU from the states of Missouri, Oklahoma, Kansas, Arkansas, Texas, Minnesota, and from sections of the states of Nebraska, Tennessee, Kentucky, Indiana, and Southern Illinois.

Here they come carrying with them their state emblem and marching to the tunes of their state songs. They are coming to greet you and express to you their respect and appreciation for the assistance you have given them in their struggle to secure improvements—which the great majority of the garment workers in most sections of the Southwest now enjoy.

Your assistance and cooperation enabled them to establish economic and social standards similar to those enjoyed by their fellow members of the ILGWU in the old established garment centers in the East and other sections. In cultural development, they have set the pace by increasing the knowledge of the officers, as well as, the members of the union in the Southwest.

Yes, with your assistance, the men and women of these young states have established higher wage standards, paid holidays and annual paid vacations. The Health Centers in our region have provided health and medical benefits and health preservation. For the aged workers in our midst, we have established

retirement funds which are built on a broad collective basis of one fund for all our members of all our industries in every center. The retirement funds are about to begin providing rest and a little leisure for those who have aged in the service of the women's garment industries in these areas.

Here, marching forward, come the 125 convention delegates, representing the ILGWU membership in the union shops of the towns and villages of those young and energetic states; saying to you, 'We need your assistance in the struggle against the industrialists and manufacturers who still carry the germs of human hatred in their breasts.'

Most of these anti-union garment manufacturers came to these states from all sections of the country. They have settled in McAlester and Holdenville, Oklahoma; in Dallas and other towns, bringing with them the old hatred and prejudices which they transplanted and intermixed with a new selfishness; and which encourages them to deny their workers their human rights.

Yes, *Seamprufe, Inc.*, in McAlester and Holdenville; The Lorches, the Donovans, the Marcey-Lees, and others, in Dallas and other parts of the state of Texas, have already succeeded in imprisoning the minds of most of their workers.

We, the members of the ILGWU who live and function in these states, appeal to you to join us and help us stop these garment manufacturers from continuing to imprison the human spirit of the human beings they employ!

We need your support in our efforts to break down the iron gate these garment manufacturers have built around the minds of their workers. We must give the workers in *Seamprufe, Inc.*; the workers in Dallas, the opportunity to join our ranks—the ranks of the organized labor movement in America—the ranks of the I.L.G.W.U., so that they, together with the rest of us, can join the legions of progressive humanity who are struggling to continue marching forward to a more enjoyable life for ALL humanity . . . a life built on a foundation of spiritual and intellectual creativeness and real human greatness."

• Southwest Regional Office

INTERNATIONAL LADIES' GARMENT WORKERS' UNION

A. F. of L.

110 N. 9th

St. Louis, Mo.

National I.L.G.W.U. Office

1710 Broadway

New York, N. Y.

Certificate of the National Labor Relations Board.

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.84, Rules and Regulations of the National Labor Relations Board—Series 6, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record of a proceeding had before said Board, entitled, "In the Matter of Seampurfe, Inc. (Holdenville Plant) and International Ladies' Garment Workers Union, AFL," Case No. 16-CA-677 before said Board, such transcript including the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Order designating Henry S. Sahm Trial Examiner for the National Labor Relations Board, dated February 2, 1954.
2. Stenographic transcript of testimony taken before Trial Examiner Henry S. Sahm on February 2, 1954, together with all exhibits introduced at the hearing.
3. Copy of Trial Examiner's Intermediate Report and Recommended Order dated March 26, 1954 (annexed to Item 9 hereof); Order transferring case to the Board dated March 26, 1954, together with affidavit of service and United States Post Office return receipts thereof.
4. Respondent's telegram dated April 13, 1954, requesting extension of time to file exceptions and brief/
5. Copy of Board's telegram dated April 14, 1954, to all parties granting extension of time to file exceptions and briefs.
6. Respondent's letter dated April 27, 1954, containing request for oral argument. (Denied, page 1, footnote 1 of the Board's Decision and Order).
7. General Counsel's exceptions to Intermediate Report received April 9, 1954.
8. Respondent's exceptions to Intermediate Report received April 28, 1954.

9. Copy of Decision and Order issued by the National Labor Relations Board on July 7, 1954, with Intermediate Report and Recommended Order annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 13th day of October, 1954.

FRANK M. KLEILER
Executive Secretary.

(Seal)

NATIONAL LABOR RELATIONS BOARD.

Filed United States Court of Appeals, Tenth Circuit,
October 16, 1954, Robert B. Cartwright, Clerk.

[97]

[Caption omitted]

[98]

Minute entry of argument and submission—

March 15, 1955

(Omitted in printing)

99

In United States Court of Appeals

Tenth Circuit

No. 4996—NOVEMBER TERM, 1954

NATIONAL LABOR RELATIONS BOARD, Petitioner

vs.

SEAMPRUFE, INC. (HOLDENVILLE PLANT),

Respondent

On Petition for Enforcement of an Order of The National Labor
Relations Board

Ruth V. Reel (David P. Findling, Assoc. General Counsel,
Marcel Mallet-Prevost, Asst. General Counsel, and Fannie M.
Boyls were with her on the brief) for Petitioner

Karl H. Mueller (Howard Lichtenstein and Harold E. Mueller
were with him on the brief) for Respondent

Before BRATTON, HUXMAN and MURRAH, Circuit Judges.

Opinion—May 4, 1955

MURRAH, Circuit Judge.

This is a petition to enforce an order of the National Labor
Relations Board directing Seamprufe, Inc. to cease and desist
from prohibiting the use of its private parking lot and adjacent
area by non-employee union organizers for distribution of union
literature and solicitation of Seamprufe's employees to union
membership during the employees' non-working hours, on
the ground that such prohibition constituted an unfair
labor practice under Section 8 (a) (1) of the National

100

Labor Relations Act, as amended, 61 Stat. 136, 29 U. S. C. A. § 151 et seq., 158 (a) (1):

Seamprufe operates a manufacturing plant located on the outskirts of Holdenville, Oklahoma, a town of approximately 6000 residents. It employs approximately 200 persons on a one-shift basis. Two-thirds of the employees live in Holdenville, and one-third within a radius of from five to thirty miles from the city. None of the employees are represented by a union for collective bargaining purposes.

Late in 1952, representatives of the International Ladies' Garment Workers' Union, AFL, began contacting Seamprufe's employees before and after working hours, on the private parking area provided by Seamprufe for the use of its employees and upon the private sidewalk leading to the rear entrance of the plant. There they greeted the employees and sometimes distributed union literature. After the inception of these visits, Seamprufe posted "No Trespassing" and "Private Road" signs on its premises, and consistently warned the union representatives that they were trespassing on company property and that they must leave the premises. After the Holdenville City Council enacted an ordinance forbidding anyone from going upon private property without the owner's consent under penalty of fine, the union organizers were removed by the city police and arrested for trespassing.

The employees ride to and from work in privately owned automobiles, either singly or in groups. They approach the plant from the east along the public road on the south side of the plant premises. They enter company property driving north on a one-way company-owned road, and park their cars on the company parking facilities at the rear of the plant. After parking their cars the employees walk to the rear entrance of the plant on the private sidewalk connecting with the private road.

101 On leaving the plant after work, the employees proceed by direction from the parking area driving northeasterly on the private road to the public road intersection along the east side of the plant, turn south onto that road and continue thereon to the intersection with the public road bounding the plant premises on the south, where they turn left toward Holdenville. There are no stop signs at either intersection, and the Board affirmed the trial examiner's findings that the employees normally do not stop at any point in the vicinity of the plant except in the parking area because the plant is located in a semi-rural area and the traffic is light. There was testimony to the effect that at the close of work on a typical day in January, 1954, 80 cars containing 225 employees left the parking lot at about a

car length apart and at speeds varying from five to twenty-five miles per hour; that approximately ten minutes after cars first began to leave the lot, the entire caravan had departed from the plant area.

Following the rationale of *N. L. R. B. v. Le Tourneau Co.*, 324 U. S. 793, and succeeding cases, *N. L. R. B. v. Caldwell Furniture Co.*, 199 F. 2d 267 (4th Cir.) cert. denied, 345 U. S. 907; *N. L. R. B. v. American Furnace Co.*, 158 F. 2d 376 (7th Cir.); *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811 (7th Cir.), the Board found that the enforcement of Seamprufe's no-trespass rule was unnecessary to the maintenance of plant production and discipline; and further that the nonstop method of driving to and from the plant area made it virtually impossible for union representatives to communicate with employees off Seamprufe's property. It therefore concluded that the enforcement of the non-discriminatory rule deprived the employees of their guaranteed right to self-organization constituting an unfair labor practice under Section 8 (a) (1) of the National Labor Relations Act.

The *Le Tourneau* case and those which followed it were concerned with the balancing of the guaranteed right of the employees to self-organization against the correlative right of the employer to maintain plant production and discipline. In arriving at this balance, the court in the *Le Tourneau* case very properly concluded that the right of the employees to distribute union literature and solicit employees upon company property was paramount to a no-solicitation rule in the absence of a showing that the enforcement of the rule was essential to the maintenance of plant production and discipline. And no such showing having been made, the court concluded that the enforcement of the company rule constituted an unfair labor practice.

The rationale of the *Le Tourneau* case was extended to the solicitation of employees by non-employees in a "working area used occasionally by employees and customers" in *Marshall Field & Co. v. N. L. R. B.*, (7 Cir.) 200 F. 2d 375. But the latter court refused to extend the doctrine to non-employee organizers or solicitors in employees' restaurants and cafeterias in the absence of a showing that by virtue of the isolated character of their employment and residence, the employees were uniquely handicapped in the matter of self-organization and concerted activity. See *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147.

Calling our attention to the fact that no right of an employee to solicit other employees on company property is involved here, but only the right of a non-employee to go upon company property in violation of a non-discriminatory no-trespass rule. Seamprufe

earnestly contends that the rationale of the *Le Tourneau* case is wholly inapplicable to our facts; that our case rather falls within that part of the *Marshall Islands* case which denied non-employees access to company property in the absence of a showing of restricted accessibility amounting to a handicap.

As we have seen, the fundamental basis for permitting the solicitation of union membership on company property is to vouchsafe the guaranteed right of self-organization. - *N. L. R. B. v. Le Tourneau*, supra. When conducted by employees the solicitation amounts to the exercise of a right subject
 103 only to the correlative right of the employer to maintain plant production and discipline. An employee on company property exercising the right of self-organization does not violate a company no-trespass rule. *N. L. R. B. v. Monarch Tool Co.* (6 Cir.) 210 F. 2d 183. But a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization.

Here the union which the non-employee solicitors represented was not the bargaining agent for the employees. Cf. *N. L. R. B. v. Monarch Tool Co.*, supra. Indeed the employees did not belong to any union, and the solicitors were therefore strangers to the right of self-organization, absent a showing of non-accessibility amounting to a handicap to self-organization.

The Board found special circumstances of inaccessibility. But we do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *N. L. R. B. v. Lake Superior Lumber Corp.*, supra, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization.

The no-trespass rule was non-discriminatory. There is no showing of antiunion discrimination as in *N. L. R. B. v. Stowe Spinning Co.*, 336 U. S. 226 and *Bonwit Teller, Inc. v. N. L. R. B.* (2 Cir.) 197 F. 2d 640, and its enforcement did not constitute an unfair labor practice.

The enforcement of the Board's order is therefore denied.

104 In United States Court of Appeals for the
Tenth Circuit

One Hundred Seventh Day, November Term, Wednesday,
May 4, 1955

Before Honorable SAM G. BRATTON, Honorable WALTER A.
HUXMAN and Honorable ALFRED P. MURRAH, Circuit Judges

Judgment—May 4, 1955

This cause came on to be heard on the transcript of the record
from the National Labor Relations Board and was argued by
counsel.

On consideration whereof, it is ordered and adjudged by this
court that the petition for enforcement of the Board's order be
and the same is hereby denied.

105 [Clerk's Certificate to foregoing transcript omitted
in printing]

106 SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1955

No. 251

~~Order~~ allowing certiorari. Filed October 10, 1955

The petition herein for a writ of certiorari to the United States
Court of Appeals for the Tenth Circuit is granted, and the case
is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the
transcript of the proceedings below which accompanied the peti-
tion shall be treated as though filed in response to such writ.

4a

Charge Against Employer—General Counsel's Ex. 1-A

4. Address (Street and number, city, zone, and State)

425 Winthrop Street, Toledo, Ohio

Telephone No.

ADams 4611

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

Congress of Industrial Organizations

6. Address of National or International, if any (Street and number, city, zone, and State)

Washington, D. C.

Telephone No.

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By (s) Lowell Goerlich

(Signature of representative or person filing charge)

Attorney for UAW-CIO

(Title, if any)

May 6, 1953

Date

EVIDENCE FOR RESPONDENT

	Direct	Cross	Redirect	Recross
William Stanley	96a			
W. R. Opp				97a
				PAGE
Intermediate Report and Recommended Order				100a
Exceptions of Ranco, Inc.				123a
Decision and Order				130a
Petition for Enforcement of an Order of the National Labor Relations Board				139a
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Minute entry of argument and submission (omitted in printing)				
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Petition for rehearing			(omitted in printing)	
Order denying petition for rehearing				144
Clerk's certificate			(omitted in printing)	
Order allowing certiorari				144

GENERAL COUNSEL'S EXHIBIT No. 1-C**COMPLAINT**

Case No. 8-CA-847

It having been charged by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, that Ranco, Inc., hereinafter called the Respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the Labor Management Relations Act, 1947, hereinafter called the Act, the General Counsel of the National Labor Relations Board, on behalf of said Board, by the Regional Director for the Eighth Region, hereby issues his Complaint and alleges as follows:

1.

At all times material herein, Respondent, an Ohio corporation with principal offices located at Columbus, Ohio, has engaged in the manufacture of thermostatic controls for refrigerators, automobile heaters and other equipment at its Delaware, Ohio, plant.

2.

Respondent, in the course and conduct of the business operations of its Delaware, Ohio, plant, annually purchases raw materials valued in excess of \$1,000,000, more than 50% of which are shipped to its Delaware, Ohio, plant from points outside the State of Ohio. Respondent annually produces finished products at its Delaware, Ohio, plant valued in excess of \$1,000,000, of which in excess of 75% are shipped to points outside the State of Ohio from its Delaware, Ohio, plant.

3.

The Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

RANCO, INC.,

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW-CIO.

Case No. 8-CA-847

- 5. 8.53 Charge against employer filed by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, hereinafter called the Charging Party.
- 8. 7.53 Complaint and Notice of Hearing issued by National Labor Relations Board, hereinafter called the Board.
- 8.12.53 Board's Order issued rescheduling hearing.
- 8.28.53 Answer to Complaint filed by Ranco, Inc., hereinafter called Respondent.
- 10.12.53 Order issued designating Charles W. Schneider Trial Examiner for the Board.
- 10.12.53 Hearing opened.
- 10.13.53 Hearing closed.
- 3. 8.54 Trial Examiner's Intermediate Report issued.
- 3. 8.54 Order issued transferring case to Board.
- 4.12.54 General Counsel's Exceptions to Intermediate Report filed.
- 4.12.54 Respondent's Exceptions to the Intermediate Report filed.
- 8.25.54 Board's Decision and Order issued.

COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. 422

RANCO, INC., PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 26, 1955

CERTIORARI GRANTED NOVEMBER 14, 1955

GENERAL COUNSEL'S EXHIBIT No. 1-A

United States of America

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

Do Not Write In This Space

Case No.

8-CA-847

Date Filed

May 8, 1953

Instructions: File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

Compliance Status Checked By:

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer

Ranco, Inc.

Number of Workers
Employed

Approx. 300

Address of Establishment (Street and number, city, zone, and State)

Delaware, Ohio plant

Nature of Employer's Business (State whether manufacturing, mining, construction, transportation, communication, other public utility, wholesale, or retail trade, service, etc., and give principal product or type of service rendered.)

Mfg. of controls for refrigeration, heating, ventilating and air conditioning.

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsection (1) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

That said employer interfered with, restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act by—

- 1—On or about February 28, 1953 and thereafter said employer denied International Union United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO,

General Counsel's Exhibit No. 1-C—Complaint

4.

International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO, hereinafter called the Union, is a labor organization within the meaning of Section 2 (5) of the Act.

5.

Respondent, from on or about January 30, 1953, to date, has prevented and attempted to prevent said Union and its agents and representatives from circulating or distributing among the employees of said plant in the Respondent's parking lot and elsewhere on Respondent's premises, pamphlets, literature and other written or printed material which said Union considered advisable, expedient or necessary to circulate in the exercise of its rights under Section 7 of the Act.

6.

At all times material herein, Respondent has had in effect a company rule or policy and since on or about January 30, 1953, has enforced and attempted to enforce the following rule or policy against said Union: The distribution of literature of any sort on company premises is restricted to company representatives and employees of the plant.

7.

Respondent, since on or about March 1, 1953, to date, sponsored and encouraged the formation of, and fostered the growth and administration of anti-union employee groups, and assisted said anti-union employees and employee groups in the preparation, dissemination and distribution of anti-union literature to its employees, and contributed financial and other support for such preparation, dissemination and distribution.

General Counsel's Exhibit No. 1-C—Complaint

8.

By the acts described above in Paragraphs 4, 5 and 6, and by each of said acts, Respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

9.

The activities of Respondent, described above in Paragraphs 5, 6, 7 and 8, occurring in connection with the operations of Respondent, described above in Paragraphs 1, 2 and 3, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

10.

The acts of Respondent, described above, constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and Section 2 (6) and (7) of the Act.

Wherefore, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused this Complaint to be signed and issued by the Regional Director for the Eighth Region this 7th day of August, 1953.

(s) John A. Hull, Jr.,
Regional Director, Eighth Region,
National Labor Relations Board.

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General Counsel's Exhibit No. 1-C (Complaint).....	5a
General Counsel's Exhibit No. 1-H (Answer).....	8a
Certification	13a
General Counsel's Exhibit No. 2.....	14a
General Counsel's Exhibit No. 3.....	15a
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Proceedings	54a

EVIDENCE FOR GENERAL COUNSEL

	Direct	Cross	Redirect	Recross
W. R. Opp		55a		68a
Reuben Peters	73a	84a	89a	89a
W. R. Opp (Recalled).....				90a
Ocie Harter	92a	93a	93a	
Gene Ford	94a	94a		

Charge Against Employer—General Counsel's Ex. 1-A

the right to distribute literature on said employer's premises at a location which was the only location at which said representatives of the union could effectively distribute said literature as said employees left the premises of said employer, although said employer permitted the distribution of anti-union literature at said location on its premises.

2—That on or about March 10, 1953 said employer paid for the printing of anti-union literature which was distributed by its employees on said company's premises at a location to which access was denied union's representatives.

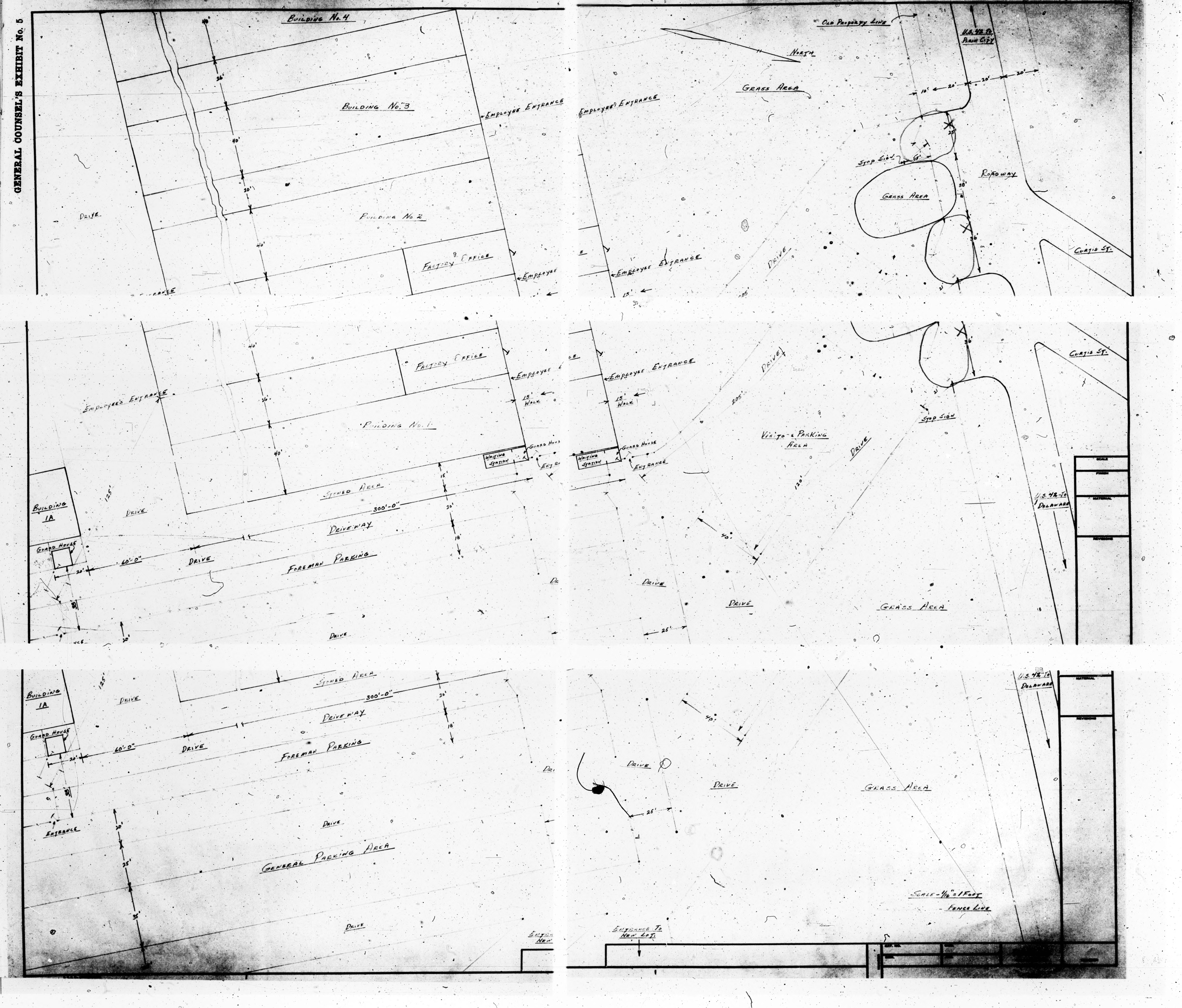
3—That on or about March 16, 1953 said employer announced a wage increase for the purpose of discouraging the union's campaign for membership.

4—That on or about May 2, 1953 and thereafter said employer held captive audiences of its employees on company time and property using said captive audiences for the purpose of indoctrinating its employees with anti-union propaganda. Said employer denied a like privilege to representatives of the union although request was made therefor and although without the exercise of such privilege, the union had no other reasonable way to present its case to said employees.

By the acts set forth in the above paragraph and by other acts and conduct said employer, by its officers, agents and representatives, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of their rights guaranteed in Section 7 of the Act.

Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge

International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO



GENERAL COUNSEL'S EXHIBIT No. 1-H**ANSWER**

Case No. 8-CA-847

Now comes Ranco Inc., the respondent herein, and for its Answer to the numbered paragraphs of the Complaint herein, relating to its Delaware Plant, says:

1. Paragraph 1. Respondent admits.
2. Paragraph 2. Respondent admits.
3. Paragraph 3. Respondent admits.
4. Paragraph 4. Respondent admits.

5 & 6. Paragraphs 5 and 6. Respondent denies each and every, all and singular, the allegations of these paragraphs except such as are hereinafter expressly admitted.

Respondent says that for many years prior to January 30, 1953, it had in effect a publicized rule to the effect that:

- "1. Delaware Plant employees are permitted to distribute literature on Company property, but not on Company time.
- "2. Any such distribution must be done in such a manner that the plant buildings will not become littered."

Respondent further says that at all times all its Delaware Plant employees have been permitted the full exercise of their rights under the above rule and that distribution of literature by Delaware Plant employees has taken place not only during 1953, but also during prior years on its property, both within and outside the plant, without let or hindrance from the Company. In addition to distribution of circulars by the charging Union (UAW-CIO), during 1953, adherents of said Union have also worn and displayed within the plant T-shirts bearing UAW-CIO advertising

General Counsel's Exhibit No. 1-H—Answer

slogans, large UAW-CIO badges soliciting votes for said Union, and pencils and pocket combs advertising the UAW-CIO. Said distribution, display and wearings by employees have not been interfered with by the respondent.

In accordance with the provisions of the above-quoted rule, the respondent answered a letter sent to it by the representative of the UAW-CIO dated January 28, 1953, requesting permission from the management "to distribute Union literature on Company property" as follows:

"This acknowledges receipt of your letter of January 28, 1953, requesting permission to distribute union literature on Company property.

"For your information, the long-standing policy of this Company, which has also been in effect during previous organizing campaigns, is to restrict distribution of literature of any sort to Company representatives and employees of the plant. Your request is therefore denied."

7. Paragraph 7. Respondent denies each and every, all and singular, the allegations of this paragraph except such as are expressly hereinafter admitted.

On May 22, 1952, an election was conducted by the National Labor Relations Board among the production and maintenance employees at the Delaware Plant, pursuant to a Stipulation For Certification Upon Consent Election. The International Association of Machinists, District 52, was the union appearing on said ballot, the details of said case appearing on the records of the Regional Office in Case No. 8-RC-1656.

The campaign which resulted from that election, the results of which were certified by the Board on May 29, 1952, was participated in actively by many of the Delaware

2

General Counsel's Exhibit No. 1-H—Answer

Plant employees, some of whom were active for, and some of whom were active against, the union which was a party to that election.

At the very outset of the current organizing drive by the UAW-CIO, which started late in January, 1953, the UAW-CIO, through its circulars, referred to employees who had theretofore been opposed to a union in their plant disparagingly, and even libelously. For example, in one of its first circulars, the UAW-CIO referred to

“management or their hirelings” and said:

“Ask Yourself what the Pay-Off was or is for the person who sponsors such (anti-union) petitions,”

thereby intentionally and falsely implying that employees who had previously sponsored petitions in opposition to a union had done so at the instance of the respondent and that they had received payment of some sort from the Company therefor.

A similar instance occurred on February 5, 1953, when the UAW-CIO issued a circular describing employees who exercised their right to oppose the union as “Rumor Mongers” who were “busy spreading Anti-Union propaganda (apparently with the blessing of the Management)”. Said circular also bore a cartoon of a wolf dressed in man's clothing, bearing the phrase “Rumor Monger”, and the caption “Who and Why?”, thereby intending to imply that employees opposed to the UAW-CIO were privately being compensated by the respondent for the opinions being expressed by them.

As a result of the above circulars, and many others in a similar vein subsequently issued by the UAW-CIO, many of respondent's Delaware Plant employees became incensed at the slurs upon them and the libelous nature of the state-

General Counsel's Exhibit No: 1-H—Answer

ments about them being made by the UAW-CIO. They therefore requested the respondent to defray the cost of printing certain literature prepared by them. The respondent agreed to do so and did cause to be printed certain literature prepared by its employees for distribution by them. Before distribution by said employees of any such literature prepared by them but printed at respondent's expense, respondent posted a Notice in its Delaware Plant informing the employees of its action.

Respondent further says that on one or more occasions, it reprinted and distributed to the employees at Delaware Plant letters or other material which employees thereat had sent to it and which reflected the feelings of the writers thereof as to the UAW-CIO.

Respondent further states that on its own behalf, it sent letters from time to time to its Delaware Plant employees expressing its frank views as to the organizing campaign of the UAW-CIO and as to the respondent's position on the subject of union organization.

None of the literature prepared by respondent and distributed by it to its employees contained promise of benefit or threat of reprisal. None of the literature received by respondent from its employees and reprinted by respondent for distribution to its employees contained promise of benefit or threat of reprisal. None of the literature printed by respondent at the request of its employees and distributed by them contained promise of benefit or threat of reprisal.

8. Paragraph 8. Respondent denies that the conduct alleged in the Complaint constitutes an unfair labor practice within the meaning of Section 8 (a) (1) of the Act.

9. Paragraph 9. Respondent denies.

10. Paragraph 10. Respondent denies.

General Counsel's Exhibit No. 1-H—Answer

11. Further answering, respondent says that the employees referred to in the Complaint as "anti-union employee groups" were not and are not "labor organizations" within the meaning of Section 2 (5) of the Act; that they are employees who desire to exercise their rights under the Act to express their opposition to the petitioning union and who have been maligned and libeled by the UAW-CIO and have sought merely to express their opposition and to answer the libels against them.

Wherefore, having fully answered, respondent asks that the Complaint be dismissed.

(s) Stanley, Smoyer & Schwartz,
970 Union Commerce Building,
Cleveland 14, Ohio,
Prospect 1-4180,
Attorneys for the Respondent.

Respondent's Name and Address:

Ranco Inc. (Delaware Plant)
Delaware, Ohio

(Please mail all documents to
Mr. W. R. Opp, Vice President,
Ranco Inc., 601 West Fifth
Avenue, Columbus 1, Ohio.)

Certification

State of Ohio)
 Franklin County) ss

W. R. Opp, being first duly sworn, deposes and says that he is Vice President (Manufacturing) of Ranco Inc., a corporation; that he has read the above Answer; and that the allegations and denials therein contained are true, as he verily believes.

(s) W. R. Opp

Sworn to before me and signed in my presence this
 28 day of August, 1953.

(s) Harry R. Hiss,
 Notary Public.

My commission expires May 14, 1956.

(Seal)

Service of Copy

The undersigned hereby certifies that a copy of the foregoing Answer was mailed, Registered Mail, Return Receipt Requested, this 31st day of August, 1953, to Lowell Goerlich, Attorney for UAW-CIO, 425 Winthrop Street, Toledo, Ohio.

(s) Eugene B. Schwartz

GENERAL COUNSEL'S EXHIBIT No. 2**NOTICE**

Recently, a union organizer, (not an employee of Delaware Plant), attempted to distribute circulars on our premises at the guardhouse. He was denied that permission.

So there will be no misunderstanding, the following statement is issued concerning existing Delaware Plant policy as to distribution of circulars:

1. Delaware Plant employees are permitted to distribute literature on Company property, but not on Company time.
2. Any such distribution must be done in such a manner that the plant buildings will not become littered.

W. R. Opp,
Factory Manager.

November 29, 1950

GENERAL COUNSEL'S EXHIBIT No. 3

[LETTERHEAD OF
INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT & AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA]

Detroit 14, Michigan
January 28, 1953.

Mr. R. H. Spiers,
Plant Mgr., Ranco Inc.
Delaware, Ohio.

Dear Sir:

As you no doubt have been informed, that the International Union, U.A.W.-C.I.O., is actively engaged in an organizational campaign of employees of the Delaware, Ranco plant. In order to contact your employees, it will be necessary to distribute union literature, at the Delaware plant.

Due to the fact, that a dangerous traffic hazard exists, when distribution takes place on the highway in front of the plant. I request written permission from management of Ranco Inc. at Delaware, Ohio, to distribute union literature on company property.

Yours truly;

Reuben Peters,
International Representative,
UAW-CIO.
P.O. Box 181,
Delaware, Ohio.
Phone 2-9571

cc. Regional Director,
National Labor Relations Board,
Cleveland, Ohio.

16a

GENERAL COUNSEL'S EXHIBIT No. 4

January 30, 1953

Mr. Reuben Peters,
International Representative, UAW-CIO
P. O. Box 181, Delaware, Ohio

Dear Sir:

This acknowledges receipt of your letter of January 28, 1953 requesting permission to distribute union literature on Company property.

For your information, the long-standing policy of this Company, which has also been in effect during previous organizing campaigns, is to restrict distribution of literature of any sort on Company premises to Company representatives and employees of the plant. Your request is therefore denied.

Yours very truly,

Ranco Inc.

By (s) R. H. Spiers, Sr.

Delaware Plant Manager

GENERAL COUNSEL'S EXHIBIT No. 6

HERE COMES THE UAW-CIO

Picture of Train entitled UAW-CIO—cars labelled as follows:

Job Security
Higher Wages
Company Paid Insurance
Decent Working Conditions
Funded Pensions
Longer Paid Vacations

Get On Your Train

To

Freedom, Security And Dignity

1,300,000 UAW-CIO members invite you to get aboard with us and move with us to a better and finer life.

America's fastest growing union, the UAW-CIO, has brought satisfaction, security and dignity to the industrial workers.

You, too, can win these advantages by joining
the UAW-CIO

Your boss probably won't like the UAW-CIO. He might not like the idea of our giving you a chance to join a union that WINS for its members. He may do everything possible to discourage you.

Now that we are here, your management will probably give you a little more money and treat you better. Don't be fooled by these bribes. Your management can take them away just as easily, if the UAW-CIO train is side-tracked.

Get aboard now.

Win job and wage protection and other advantages by getting a UAW-CIO enforced contract at your shop. We

General Counsel's Exhibit No. 6

cannot tell you all the reasons why you should join the UAW-CIO in one leaflet, but there will be more.

Watch for them Re . . . them . . .

Talk them over with your fellow workers

(Emblem)

United Automobile, Aircraft and Agricultural Implement
Workers of America (UAW-CIO)

CS 1

GENERAL COUNSEL'S EXHIBIT No. 7

In Union There Is Strength

Picture of pair of hands
gripping many sticks

Picture of pair of hands
snapping one stick

THE UAW-CIO IS MORE THAN A UNION

It is 1,300,000 workers who believe in the idea that every individual has the inherent right to happiness and prosperity.

However, workers have found that "belief" alone is not sufficient to secure the ideal. They have learned that they have to fight as well as work for their share of the blessings God meant for all.

They have learned that they can't accomplish much as individuals. So they have joined with their fellow-workers and are proud of the fact that their great union, the UAW-CIO, has grown until it is America's largest and most democratic union. They have elected resourceful, unselfish leaders to guide them in an intelligent fight for their full rights as free American workers.

General Counsel's Exhibit No. 7

The UAW-CIO believes that obtaining for its members the highest wages, the best working conditions, the largest pensions, etc., is not enough. Because the UAW-CIO is the humane institution that it is, it believes that the work of the Union does not stop at the plant gate.

That is why it has the largest and best staff of trained technicians of any union in the world.

That is why the UAW-CIO is able to help its members on almost any problem they may have.

Because the UAW-CIO believes in the dignity of the individual and strives intelligently in behalf of all its members, it is the largest and fastest growing union in the world.

YES! THE UAW-CIO IS MORE THAN A UNION. IT IS A BETTER WAY TO A BETTER AND FINER LIFE.

You will be proud to belong to the dynamic UAW-CIO

. . . Join Today!

(Emblem)

United Automobile, Aircraft and Agricultural Implement
Workers of America (UAW-CIO)

CS 2

For further information
contact Mr. Peters, UAW-CIO,
International Representative,

473½ S. Sandusky, Ave.,

Delaware, Ohio, Tel. 2-9571

General Counsel's Exhibit No. 7

(Pamphlet)

**THE CONTRACT
SUCCEEDED
WHERE LOVE FAILED****The Facts About
Women in Factories****UAW CIO Education Department
Women and the Union**

Someone once said that the measure of a civilization is the way it treats its women and children.

If you apply this measure to institutions within a civilization, particularly the scale relating to women, you come on a startling and unpleasant reality:

the discrimination against women in the tax laws, the discrimination against women in wage scales, the discrimination against women in job opportunities.

These discriminations reveal a fundamental operational cruelty in the economy (like the discriminations which are equally cruel to other minorities).

Using the same yardstick, you come on a new view of unions, and particularly unions like the UAW-CIO, which are completely committed to removing the discriminations against women (and all minorities).

Unions are not just crude economic agencies—they are civilizers.

More than any code of chivalry, more than any Galahad or Lancelot, union people with union contract clauses are winning for women the respect, the dignity, the security, the rewards they are entitled to.

The gains and the goals are based, of course, not on any belief that women are entitled to special rights and

General Counsel's Exhibit No. 7

privileges, but that they are entitled to equal rights and privileges.

The Most Numerous Minority

Is a

MAJORITY

An Insight Into the Inside of the
Problems of Working Women

Notice something in the plants these days?

More women around.

Back in July, 1944, more than 20 million women worked for wages. One out of every three workers was a woman.

Now, with 19½ million women working out of 63 million workers, it won't be long before one out of every three workers again will be a woman.

Why are they working?

The best two reasons in the world.

First, because the country needs them.

Second, because they need the work.

Take the first reason, the need of the country for the work women can turn out.

Women Are Manpower

Women are manpower. They are a major manpower resource of the country.

If there were no women available to work in factories, the fight against inflation would be almost impossible to maintain.

Defense agencies now predict that the country is going to do the impossible—not only guns and butter, but by 1953, guns and washing machines, and guns and new cars, and guns and television sets.

General Counsel's Exhibit No. 7

The guns, plus the things you can buy on the installment plan, are possible only because there are women to man the production lines.

Without the women workers, all the manpower would be used for guns and there would be very little left over.

These women you see coming into the shop, you need them, need them badly.

But they need work, too.

One out of every six working women is widowed or divorced.

One out of every five is the only provider in her household (some are supporting injured husbands).

Back in 1944, the Women's Bureau made studies of some 13,000 employed women. From them the Bureau got information which was more or less typical of all women working then. This information is probably true of women working today.

Seventeen out of 20 of these women were working to support someone besides themselves—a mother, a father, children, brothers or sisters, a husband.

While it turns out that women work to support families, even if they didn't have families to support, they have to work to support themselves.

(Picture with following caption)

Under the tax laws, a maid to care for the children of a working mother is not necessary but the girl friend of a business man in another city is (and is tax exempt)

Even if no one was dependent on a working woman for support, justice and humanity would still entitle her to a job, to live, and to find the creative satisfaction every human gets out of doing useful work.

Women work, and are entitled to work, for all the reasons that require men to work and entitle them to jobs.

The union stands for everybody's right to a job.

General Counsel's Exhibit No. 7

Chances are, you and most other people have the wrong kind of mental image of a working woman. You probably think of a young woman biding her time on the job until she can get married.

Or biding her time after marriage until she has a baby.

The truth again is that the typical working woman is a mature person saddled with major family responsibilities. She is not a teen-ager or anything near a teen-ager.

Half Over 35

More than half of all working women are over 35.

What kind of family responsibilities is a working woman saddled with

A study based on the 1940 census shows that the less money the husband makes, the more likely it is that the wife works.

(Picture of woman with money)

The more money the husband makes, the more likely it is that the wife is in the home.

Where husbands reported incomes of \$1,000 to \$1,500 a year in the 1940 census, the wife was twice as likely to have a job outside the home as in the families where the husband reported an income of from \$2,000 to \$3,000.

Eighty Hours a Week

A woman who works has it tough.

More than a third (36 per cent) of the working women studied by the U. S. Women's Bureau several years ago did practically all of their own housework after coming from their jobs. They shopped, prepared two meals a day, washed, ironed, made the beds, washed the bathroom and kitchen floors, swept.

General Counsel's Exhibit No. 7

Half of the women studied, shared housework with someone else in the house. Less than one out of 11 had no housework to do.

Other studies seem to show that a working woman with family responsibilities tends to put in about 80 hours a week between her household and her job.

If she has a family at all, her responsibilities push her toward the 80-hour mark.

Then, because she is human, 80 hours tend to be the physical limit of what a woman can do.

A job, then, for many women very nearly approaches being an heroic undertaking.

But is a working woman treated like a heroine?

The answer is, of course, no:

Instead, women are harassed, discriminated against, and penalized as if their work were a crime instead of pure gold and a contribution to the well-being of the community.

Discrimination at Hiring Gate

Women are discriminated against in the hiring office. They are oft turned down arbitrarily for jobs for which they are qualified.

On the job, they are often paid lower wages for doing the same work men perform.

They are denied promotional and transfer opportunities because they are women.

The income tax laws discriminate against women with children in the home so fiercely that many are discouraged from working altogether and are forced on relief. A businessman can deduct the cost of whiskey and female entertainers undertaken in the name of making a sale. But a working mother (or father in a motherless family) is

General Counsel's Exhibit No. 7

not allowed to deduct the cost of a nursery school for her children while she works, or a maid to look after the children if there are no nursery schools available.

Working women today are penalized by excise taxes on the washing machines, vacuum cleaners, and dish washers that could help get their hours down below 80 a week.

(Picture)

INCOME TAX OFFICE

Children bearing signs:

"Unfair to my working mother"

Love Isn't Enough

What is gradually setting women free of these discriminations is not the respect men have for women.

No. Not respect. Not love. But the economies of war and industrial unions.

During the first world war when large numbers of women were put to work in the plants (women and children were the first factory workers, and women led the first factory strikes more than 10 years ago), the National War Labor Board came out with an equal pay for equal work declaration of policy.

Actually, only 50 cases came up under this principle. Throughout industry in general during the first world war, women got from 25 to 50 per cent less than men for the same work.

Right after the first World War in 1919, still under the pressure of the need for women to work in factories, two states—Michigan and Montana—passed equal pay for equal work laws.

But because women were largely unorganized, the equal pay for equal work policy was not enforced during the first world war.

General Counsel's Exhibit No. 7

The Michigan law, in the same way, was never enforced until industrial unions were organized.

After the UAW was organized, however, 29 women in a GM plant in Lansing sued GM under

(Picture)

A Great American President

Andrew Jackson said . . .

" . . . when the laws undertake . . . to make the rich richer and the potent more powerful, the humble members of society, the farmers, mechanics, and laborers . . . have a right to complain of the injustice of their Government . . ."

(Picture)

the law and collected more than \$55,000 in back pay.

It took the women four years to win the suit. They did not collect until 1942.

From the first world war until the New Deal, very little progress was made by women. In fact, the depression spread the silly notion that firing women was a way somehow to make jobs for men—a completely false notion.

NRA, the government agency Franklin Roosevelt organized to fight the great depression, which brought recognition of the rights of people to organize into unions, also made it a violation of the fair practice codes to pay women less for a job than a man.

Union Better Than Chivalry

Then the Wages and Hours Law (the Fair Labor Standards Act of 1938) established only one minimum wage for men and women (white and Negro, Jew and gentile, Catholic and Protestant).

During the second world war, the War Labor Board in 1942 came out with an equal pay for equal work ruling.

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UAW forced this decision (it was against General Motors) which was handed down as a result of a UAW appeal.

Under pressure of the war, too, 10 more states and the Territory of Alaska enacted equal pay for equal work laws to bring the total up to 13.

In addition to Montana and Michigan, Illinois, Washington, New York, Rhode Island, Pennsylvania, New Hampshire, Maine, Connecticut, California and Alaska now have equal pay for equal work laws.

Now the UAW (and other unions) is pressing for a national law and laws in each state.

The laws, of course, do not put an end to discrimination against women. At the close of the last war, women, the Women's Bureau found, were getting from four to 26 cents less an hour in all but one of 27 important job classifications in which both men and women were employed.

An equal pay for equal work clause (in the contract, along with an equal seniority and opportunity provision for everyone, are far more effective in practice than a law.

Backed up by a good Fair Practices Committee and a rank and file in the plant who understand how important equal treatment for everyone is, the clause gives you an almost completely humane set of rules for working women.

Contract Clause Better Than Anything

How powerfully a contract clause, plus a good committee, plus alert committeemen, actually operates can be measured in the fact that in three UAW cases alone involving equal treatment for women—

in General Motors, Pontiac;
in Chrysler, Dodge Truck;
in Allis-Chalmers, Milwaukee—

General Counsel's Exhibit No. 7

more than \$100,000 were recovered for women who had been discriminated against.

More important, in these cases and others like them, a principle was laid down that established once and for all the equal rights of women (how much does a practice that keeps you healthy save you in doctors' bills? It is a sum you cannot compute).

Laws are important nevertheless, even when you have contract clauses, because they protect women who are not in unions.

At the same time, they strengthen the union protection by giving women workers a double-bar-

(Picture)

reled attack on discrimination (sometimes they authorize fines which give companies pause when the chance of losing a grievance doesn't frighten them).

The fact that a law is on the books helps educate people to accept the equal pay practice.

For that matter, outside of unions, only in a few of the women's magazines is there any sympathetic understanding of the problems of the working woman. Newspapers in general, the radio, most magazines, the movies, all tend to project a false view of the working woman.

The distortion naturally is lodged in people's attitudes, too.

Even where there are model contract clauses and union committees understand the problem perfectly, there is a need for explanation and discussion.

General Counsel's Exhibit No. 7

(Picture of Abraham Lincoln)

Strongest Bond

The Strongest Bond of human sympathy outside the family relations should be one uniting working people of all nations and tongues and kindreds.

Abraham Lincoln

To a committee of workingmen in
Washington, March 21, 1864.

Here are some basic points that could be made in every union discussion program:

Basic Facts

1. Discrimination against any group of workers in the community (whether women, Catholics, Protestants, Negroes, Jews, Mexicans or whatnot), even where the employer is guilty of the discrimination, tends to make enemies of the union. People who can't get jobs tend to resent the people who do get the jobs they are denied.

2. Discrimination against women (married women, or any other group) tends to establish a precedent which is extended to other workers (in grievance cases, employers use the same employer prerogative to eliminate all men over 45, or all men with heart disease, or all men who can't pass a certain kind of physical examination that they use when they try to eliminate women).

3. When certain kinds of jobs are classified as women's jobs, not only are women victims of discrimination, but men who might want these jobs are also discriminated against.

4. The unorganized workers, people who have been discriminated against in the past, are the very people whose support must be won and who must be persuaded to vote in elections, if political action by labor is to be successful. Putting these people on jobs where they are not victims of discrimination is a sure way to get them to vote.

General Counsel's Exhibit No. 7

5. Everyone recognizes that a plant in Mississippi making your product and paying wages 50 cents an hour less than you get threatens your job. In the same way, a lower differential wage for a woman for your job is a constant threat to your wage and your job.

6. Discrimination against women not only denies children and other dependents a decent livelihood, but frequently it can also add to your cost of living by putting the family on relief and jacking up your taxes.

7. Just as some parts of the South, because of their low purchasing power, tend to reduce job opportunities for the people who might produce the things these people would buy if they could afford them, so low wages to women tend to cut off job opportunities for wage earners in general.

8. The victims of discrimination against a mother are children as well as the mother. At any particular moment the victims may be someone else's kids, but an accident might make your children victims of that discrimination unless the discrimination is stamped out.

9. During the present manpower shortage, any discrimination which discourages people from working, or which prevents people from working at their highest skill, costs the country production, and costs you goods and thus helps aggravate shortages and inflation.

Discrimination Hurts Everyone

The way the special subcommittee of the US House of Representatives Committee on Education and Labor (81st Congress) put it was:

“... discriminatory wage practices based on sex are found to cause labor disputes, depress wage and living standards of employees of both sexes, injure living stand-

General Counsel's Exhibit No. 7

ards of persons dependent on such employees for support and prevent maximum utilization of available labor resources."

(Picture)

An Address to the War Profiteers

Go to now, ye rich men, weep and howl for your miseries that shall come upon you.

Your riches are corrupted, and your garments moth-eaten.

Your gold and silver are cankered;

And the rust of them shall be a witness against you, And shall eat your flesh as if it were fire.

The Epistle of James the Apostle

(Picture)

In the same Congress, a Senate committee declared that getting an equal and even break for women in the US could help in the international struggle:

Need Women in Cold War

"Instances of inequality of opportunity for women which occur in this country have been and will continue to be avidly seized upon by governments who are in opposition to ours to use as propaganda in campaigns to destroy the confidence of people of other countries in this nation. As the Senate well knows, the issue of equal pay for women has been exploited repeatedly by iron curtain countries in international bodies over the past years to embarrass the United States."

The unanswerable reason for giving women workers equal pay and opportunities and rights has nothing to do with economics or winning the cold war, or the fact that any woman worker might be somebody's mother, or your widow—the real reason is that arbitrary inequality of treatment is immoral and unjust.

The union was organized in the first place to combat injustice, against women as well as men.

General Counsel's Exhibit No. 7

(Picture)

EQUAL PAY FOR EQUAL WORK

It's the law in 12 States—It's in the contract

PRESCRIPTION FOR INJUSTICE

Here are some proposals, practical and impractical, that have been offered to help win equal treatment for working women:

1. Equal pay for equal work clause in the contract.
2. National and state equal pay for equal work laws.
3. Fair employment practices laws to forbid discrimination on account of sex as well as for race, color, religion, and draft status and age.
4. Active Fair Practices Committee in your local (with a special subcommittee dealing with women's problems).
5. Amendment to the income tax laws to allow working women (or fathers in motherless homes) to deduct the cost of maintaining a maid in the home to care for children (or the cost of nursery school).
6. A double income tax exemption for a woman head of a family (or a widower) who is forced to hire someone to look after the children while she (or he) works.
7. Housekeeping service which provides care for children in the home for working mothers.
8. An extended all-day school program which takes care of children during the working hours of a working mother.
9. Refund of excise taxes on the household appliances (washing machines, ironers, vacuum cleaners) purchased by working mothers.
10. Design of clothes and other household linens that don't need ironing.
11. Low-cost community restaurants where families in which the mother is employed might eat.

General Counsel's Exhibit No. 7

12. Reestablishment of the wartime low-cost nurseries (in Norway and Sweden, "Park Aunts" take care of children for a fee in public parks— and in Norway there are nurseries in factories— and in some U. S. cities, department stores have them—some UAW locals have child care facilities on Saturday mornings).

13. Reestablishment of shopping facilities at or near factories to enable working mothers to shop conveniently.

(Funny, the corporations that operate copper mines, lead mines, uranium diggings are all given subsidies to produce metals. Oil well operators get a special munificent deal. Farmers get subsidies to raise cotton and other commodities. The manufacturing companies all were sweetened through special tax concessions so they could work on defense enthusiastically. These special subsidies to people who don't need them, of course, account for the fact that working mothers are penalized for their contribution to the defense effort. The crime of the working mother and her children is that they need the consideration the mine operators and oil speculators get, without need.)

(Picture)

It is wrong to say that God made rich and poor; He made only male and female, and He gave them the whole earth for their inheritance.

—Thomas Paine.

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GENERAL COUNSEL'S EXHIBIT No. 8

YOUR RIGHT

To Join a Union, You Are
Protected By Law!

(Picture of eagle perched on shield)

Labor Management Act—1947.

Sec. 7, Employees have the right to self organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aids or protection.

Report Violations.

The International Union UAW-CIO assures the Ranco employees, that any interference or discrimination by management or their representatives, during This Organizational Drive, will be prosecuted to the fullest extent of Federal law.

You workers of Ranco, are requested to report immediately any and all threats or discrimination, no matter how minor, by management or supervision, any time during this Organizational Campaign, to the U.A.W.-C.I.O. office, 17½ N. Sandusky St., Delaware, Ohio, telephone 22661. Office will be open.

If You Have Not Signed An Authorization Card With The UAW-CIO. Contact One Of Your Organizing Committee, On Your Own Time, Or Stop At The Office* But Don't Wait For The Other Fellow, Do Your Part.

Your right by Federal law includes passing out union literature, union application cards, signing union application cards and talking union on company property, on your own time, such as; before and after work and during lunch periods.—Let The Company Deny Openly This Right.

General Counsel's Exhibit No. 8

Don't Be Fooled This Time by Phoney Promises.

Don't be kidded by management or their hirelings, this time, with a lot of phoney promises, that they will not be required to keep. You Know What Happened Last Year.

Don't be fooled by signing Anti-Union Petitions. Ask Yourself what the Pay-Off was or is for the person who sponsors such petitions. You Are Not Required By Law To Sign Such Petitions—I Don't Believe You Desire Your Name Photo-Styled And Distributed As Last Year. Report Such Petitions To The Union Office.

Join The UAW-CIO, and Help Your Fellow Workers Who Are Trying To Improve Your Wages And Working Conditions.

UAW-CIO Organizing Committee
Delaware, Ohio, 17½ Sandusky St.

2/25/53—Tel. 22661.

RESPONDENT'S EXHIBIT No. 1-B

May 11, 1953

Mrs. Rhoena L. Myers,
442 West Central Avenue,
Delaware, Ohio.

Dear Mrs. Myers:

Reference is made to your letter dated May 6, 1953 in regard to selling "Buddy Poppies" at the Ranco Delaware Plant.

It has always been our policy to refuse any selling, distributing, passing of handbills, etc., to any person not an employee of Ranco. An employee of Ranco may do these things as long as it is done on the employee's time; that is, before and after his or her regularly scheduled work time, during lunch time and during rest periods.

In view of the above, your request as presented in your letter of May 6, 1953 must be refused.

May I suggest you get volunteers among the present Ranco Delaware employees to help you do this job on Friday, May 22, 1953? You may station one or two at each plant gate in the morning (6:30 a.m.) and the same for the second shift (3:00 p.m.). I would like to point out that Ranco employees doing this work must be on their own time.

I sincerely hope this will help you to do the job you wish to do.

Very sincerely yours,
Ranco Inc.
Paul M. Burke.

fh

RESPONDENT'S EXHIBIT No. 2**List Of People Who Passed Union and
Anti-Union Literature****Inside Front Gate Of Delaware Plant**

Union—3-31-53

Kermit. Rhoton—
Don Byles— Front Gate—6:30 to 7:00 A.M.~~Robert Smith. (Sep.)— Back Gate—6:30 to 7:00 A.M.
Clarence Fraley~~Clifford Logue—22409
Dept. 212 Front Gate—3:00-3:30 P.M.

Union—4-17-53

Clifford Logue—22409

James Dickey—22814

Delmar Pickens—22813

These men passed out literature at the gate on Company property, 2nd. shift

Anti-Union—4-28-53

Myrtle Morrison—212-2

Mary Trout—212-2

Mary Bright—212-2

Ocie Harter—205-2

These women passed out literature against the Union on their own time, at the front and back gate, 1st. shift

Union—4-29-53

Clifford Logue—22409

Frances Wingo—22455

Eva Murphy—21121

Marie Coyle—20043

Ada Logue—22824

These people passed out literature at the front gate on the grounds, 3:00 P.M.

Respondent's Exhibit No. 2

Anti-Union—4-29-53

Ocie Harter—1450—205 At Gate House #2

Union—4-29-53

Roy Gooding—20859—205 At Gate House #2

Anti-Union—5-6-53

Rebecca Wilson—212-2

Kathy Evans—205-2

Vena Crist—205-2

Charlotte Mills—212-2

Carrie Swearengin—212-2

Ocie Harter—205-2

Union—5-13-53

Kermit Rhoton—20761

Donald Byles—20388

Passed out literature at Gate #2

Anti-Union—5-13-53

Ocie Harter—1450

Passed out literature at Gate #2

Anti-Union—5-13-53

Juanita Mc Cumber—212-2

Marie Norberg—205-2

Ida Barkeloo—294-2

Ocie Harter—205-2

Union—5-13-53

Buelah Poling—21179—293-1

Minda Stover—20014—212-1

Carl Westcott—22747—206

Anti-Union—5-20-53

Mary Trout—212-2

Mary Bright—212-2

Passed out literature 2nd. shift front gate

Respondent's Exhibit No. 2

Anti-Union—5-20-53

Ocie Harter—205-2

Mary Lou Watkins—211-1

Jean Watkins—211-1

Emma Gray—298-1

Edna Eckles—294-1

Bob Goff—250-1

Anti-Union—5-26-53

Ocie Harter—205-2

Evelyn Ingle—212-1

Ruby Tanner—211-1

Frances Longworth—298-1

Clara Cain—220-1

2nd. shift

Charlotte Mills—212

Rozella Stout—293

Distributed literature at front and back gate

Union—6-2-53

Donald Byles—20388—212-1

Buelah Poling—21179—293

Kermit Rhoton—291

Alma Perry—201

Anti-Union—6-8-53

Ruth Bachelder—220

Frances Longworth—298

Emma Gray—298

Ocie Harter—205

Myrtle Morrison—212

Union—No Date

Kermit Rhoton—291

Donald Byles—212

Carl Westcott—212

Donald Byles left the front
gate and passed out litera-
ture at the back gate.

RESPONDENT'S EXHIBIT No. 3



RESPONDENT'S EXHIBIT No. 5

Delaware Ranco Plant 3-5-53

HAVE NO FEAR!

(Picture of stork carrying infant)

Medical science finds that, when you were born and during infancy, you did not know the meaning of Fear. But as you grew to man-hood and woman-hood you began to Fear different problems, possible sickness, death and etc. problems you have little control over, however medical science has been able to check some of those problems.

So your real Fear Problems, such as; a sudden Lay-Off or Discharge, a Decent Living Wage, Full Coverage Insurance, Pensions for when you are too old to work, yet too young to die, equal pay for women and improved conditions of employment, are Problems That You Can Do Something About—By Joining The UAW-CIO, the World's Most Agressive union.

RUMOR MONGERS AT WORK.

Apparently some of the Rumor Mongers at Ranco, on Company Time, are busy spreading Anti-Union propaganda (apparently with the blessing of Management), such as; The company knows each and every one that signs a union card, and are going to clean house—We Wonder What the Pay-Off is or has been, for the Person or Persons, starting such Rumors? Under No Circumstances Will The Company At Any Time Know Who Signs A Union Card—By Law It Is None Of Their Business—and the International Union UAW-CIO., Will See To It That Your Right To Join A Labor Union is Not Interfered With—Report Any and All Violations To The Union Office Promptly.

Did you ever wonder why, when you were called to the office and requested to go along with the company, against

Respondent's Exhibit No. 5

the union, That You Were All Alone, with Several Company Representatives? Of course the answer is very simple—That Is Done In Order That You May Not Be Able To Prove The Threat, in Case a Unfair Labor Charge Is Filed Against The company. However If Called In Report The Incident Promptly To The Union Office—It Might Protect You At A Later Date.

(Picture)

Rumor Monger
Wolf in Man's clothing
Who and Why?

We understand the Company Counselors are at their old tricks again, calling section meetings and again promising every thing under the sun—Don't be Fooled This Time By Promises That The Company Will Not Be Required To Keep—Remember The Juicy Promises Of Last Year? Remember How You Were Let Down After The the union election last year? Remember How They Forgot You, Until The UAW-CIO Representatives Arrived At The Plant Gates?—Well If You Can Receive Some Additional Benefits By The UAW-CIO Being At The Plant Gates—Just Think Of The Real Gains You Will Make When The UAW-CIO Negotiates A Signed Contract With The Ranco Management. Certainly You Will Never Have To Fear Being Unjustly Laid-Off Or Discharged—You Will Have Real Job Protection.

Want To Discuss Your Problems With The UAW-CIO?

Then call at your convenience, the office is located at 17½ Sandusky St., Delaware, Ohio, if you can't—before the office closes, call for an appointment tel-22661—Office Hours 9:30 AM to 5:30 PM.

By: Inter-Plant Organizing Committee of UAW-CIO,

17½ N. Sandusky St; Delaware, Ohio.

3/6/53

RESPONDENT'S EXHIBIT No. 6

Ranco Delaware 3-24-53

GRIPE SESSIONS.

(Picture)

Ranco Workers reaching for package labelled "Promises"
 Company's Counselor, behind fence, holding string tied to package

Don't you wonder why, that all at once the Company becomes interested in Your Problems? Nearly a year passed, without the Company calling Gripe Sessions. It seems Easy To Figure Out, Why They Are Calling Them Now. The UAW-CIO Is On The Job, so the Company seems to think that a Few Sugar-Coated Promises, (Which They Will Not Have To Keep) will keep your mind off the Real Problem of more Money in Your Pay Check and a real honest to goodness Bonus System.

The International Union, UAW-CIO., gives assurance to the Ranco workers, that after the union has been certified as the bargaining agent Your Bonus Mess Will Be Straightened Out, And Will Be Spelled Out In A Signed Agreement.

No more pulling you off your job after you have made a few hours bonus and putting you on a job that you can't make out on—A Very Clever Way Of Speeding You Up, Without Proper Compensation For All Hours Worked, and your increased production. Under the present bonus system, we estimate each worker is Clipped For App. \$2.00 per day—is it any wonder the Company would like to see you stay un-organized?

EQUAL PAY FOR WOMEN.

Yes you women workers, you have plenty to gain by joining the UAW-CIO., Union Contracts Read; (Women Shall Receive Equal Pay For The Same Or Similiar Work Performed By Men. Do You Realize What This Will

Respondent's Exhibit No. 6

Mean In Additional Earnings? If In Doubt Check With The Union Office. We Will Prove To You Any Statement or Statements at Anytime.

Don't permit Anti-Union People, (who apparently have been taken care of by the company) to discourage you or threaten you in becoming a member of the union. Federal Law Gives You The Right To Join A Union, and the UAW-CIO, Pledges The Resources Of The Union, in Protecting You. Report Any And All Interference Promptly To The Union Office. No one will at any time know you signed a card. There will be No Initiation Fees for Ranco Workers Who Join Prior To The NLRB Election. There Will Not Be Any Dues Until The Union Has Been Certified and Your Committee Begins Negotiations With The Management.

We again Challenge the Company to post a notice stating, (That The Company Will Abide By Federal Law, And Will Not Interfere In Any Way, With The Right Of Their Workers To Join A Union Of Their Own Choosing.)

By—UAW-CIO Organizing Committee of Ranco.

17½ N. Sandusky St. Delaware, Ohio.

Telephone 22661.

3/26/53.

(Stamp)

JOIN UAW-CIO
TODAY

RESPONDENT'S EXHIBIT No. 7

Delaware 5-13-53

**COMMON LIES
About
STRIKES—BY UAW**

The UAW-CIO, because it has steadfastly served its members, has naturally been a target for lies and slanders from several sources: Anti-Union Companies and Agents For The Companies.

The slanders have been contradictory, but this is easily understood because they are intended to confuse and mislead and not to help workers.

Here are the most common slanders:

Slander: The UAW-CIO resorts to Wildcat strikes.

Answer: Strikes can be called in the UAW-CIO, only with approval of two-thirds of the effected local union members, voting by secret ballot and with ratification of the International Executive Board.

Actually, despite a few widely-publicized strikes, there have been relatively few strikes by the UAW-CIO, and those that have been conducted made it possible for the vast majority of UAW-CIO members to make gains in wages and working conditions without striking. Thus the General Motors strike in 1946 made it possible for most American Industrial workers and most UAW-CIO members to win the 18½-cent pattern without a strike. Similarly, Chrysler and Ford negotiations in other years secured the 11½-cents and paid holidays pattern without a strike. Pensions and cost-of-living wage increases and an annual automatic wage increase were obtained throughout the UAW-CIO, industries without a strike. Today, most UAW-CIO members work under five-year contracts which provide for automatic annual wage increases, increases in

5

Respondent's Exhibit No. 7

pay to match increases in the cost of living, pensions, health and medical insurance, and an umpire for the adjudication of disputes.

More than 1,200 contracts providing for wage increases and pensions were signed without a Strike.

14 Years Without A Strike is the record of your fellow workers at the Nash division of Nash-Kelvinator Corp.

Remember Lies and Confusion Are The Weapons Used By Anti-Union Managements, In Order That They May Continue To Exploit Your Pay-Check And Continue The Killing Pace Of Speed-Ups. Be Wise Organize. UAW-CIO.

(Picture)

People going to Membership Meeting

At the Eagles' Hall, 38 East Winter St., Delaware, Ohio.
Friday, May 15, 1953.

1st and 3rd shift—7:30 P.M.

2nd shift, will meet after work, midnight Friday.

Attend and Bring Your Spouse and Discuss the Benefits
• You can Gain, by being represented by the U.A.W.-C.I.O.

UAW-CIO, Organizing Committee

17½ N. Sandusky St.

Delaware, Ohio. Phone 22661

RESPONDENT'S EXHIBIT No. 8

Delaware 6-5-53

(Picture)

Management holding to bull's tail
 "Throwing the Bull"

FACTS ABOUT STRIKES

The old saying, Keep the minds of people confused, with part truths and they will forget about facts and the truth—This seems to be the method used by Ranco Management.

You have read Ranco's letters and phamplets, attempting to Blast the UAW-CIO, for strikes. Lets take a good look at the recent negotiations with the Automobile and Refrigeration Industries and analize the results of those negotiations, which again was accomplished without a strike. These agreements are 5 year agreements.

A few weeks ago the Company permitted to be distributed at the Ranco plant in Delaware, literature pertaining to a strike at the Ford Plant in Canton, Ohio. The same day the leaflet was distributed, Ford settled the strike at Canton, Ohio, and completed negotiations with the UAW-CIO, covering all Ford Plants. The Ford workers won an increase in monthly pensions, which now total \$137.00 per month, ten and twenty cents per hour increase for skilled workers, and very important Freezing 19c per hour of the 24c cost of living increases—which means every Ford worker now receives 19 cents increase to their base rates plus 10c and 20c for skilled workers—plus an extra 5c effective June 1, 1953, plus 5c June 1, 1954, plus 5c, June 1, 1955.

Be Honest With Yourself. How Many Years Would It Take You To Make The Same Gains At Ranco?

A similar agreement was reached with General Motors, Chrysler, Nash-Kelvinator, within the past two weeks. All

Respondent's Exhibit No. 8.

other cost of living contracts with other Companies are now in the process of being reopened and negotiated by the UAW-CIO, for the same benefits.

What Has Ranco Done? Nothing. During the past years when over a million UAW-CIO members have been receiving a real cost of living increassses, Ranco paid the measley sum of 9c per hour, which gives you* a total loss of 15c per hour. Even if Ranco freezes the 9c to your base rates, you are still the loser by hundreds of dollars per year.

Please Note The Above Mentioned Gains Was Made By The UAW-CIO, For Over A Million Members Without A Strike.

You know the story about the chisling methods used by Ranco in Computing Holiday Pay (The Holidays You Actually Got Paid For,) and your Measly Vacation Pay Checks, which are Computed on your Measley Low Base Rates. Is it any wonder the management is playing Little Red Riding Hood and crying, Wolf, Wolf, Wolf?

Most of Ranco's production is put into cars and refrigerators that are made by plants under agreement with the UAW-CIO. When a few of those isolated managements refuse to bargain in good faith with the union and force the union to take strike action, Ranco workers loose time and and money as a result of the strike in those plants and without any monetary gains which are won by the striking workers. Yes We Say Monetary Gains; because the Automobile and Refrigeration Industries are highly competitive, the plant on strike gets far behind on delivery of their product, and after the settlement of the strike, the Company is forced to work overtime at premium rates plus what ever increase was negotiated in the strike settlement, in order to ketch up with their production.

Respondent's Exhibit No. 8

We have proof that workers who were forced out on strike by a vicious management for a long period, Earned More Money For The Year Of The Strike then in the Previous Year When There Was No Strike In That Particular Plant—Income Tax Records Prove This Statement.

If Ranco workers will take the time and check back over a period of years, they will find during strikes effecting the industries of which Ranco is a supplier, they will find the following facts; Ranco worked short hours and laid off many workers without pay, which they never made up, while the strikers after their return, received the increases won by the strike plus overtime at premium rates.

Those are some of the reasons we think it necessary to inform the Ranco workers—That Strikes Are Only Called Against Vicious Positions Taken By A Few Managements.

Did You Ever Think Why Mr. Opp Has Evaded The Strike Issue Regarding His Columbus, Ohio Plants, Who Are Under Contract With A Union? Or Do We Assume Correctly That Their Has Been No Strikes In Ranco At Columbus, Ohio?

You see, when You as an unorganized worker at Ranco protests unfair treatment by management, you are usually told, Take It Or Leave It And Quit. Many workers have reported this type of treatment to the union.

But the story is much different in plants under UAW-CIO contracts, when the union or the worker is right in what ever issue is involved, and stubborn managements attempt to stall or pass the buck, then and Only Then, Does The Union Resort To The Strike Vote Weapon The Only Weapon A Worker Has, and in most cases When The Vote Is Taken A Settlement Is Reached Without A Strike.

Remember when a company resorts to taking people to Columbus, Ohio to train them how to defeat the organi-

Respondent's Exhibit No. 8

zation of their fellow workers, spending thousands of dollars in attorney fees, printing literature and holding captive meetings of their employees—Their Sure Is A Reason. We Assume Their Real Reason Must Be—In Order That They Can Continue To Crack The Whip—Dictate All Policies In Regard To Wages, Working Conditions, Fringe Issues, To Speed Up Production At Their Own Will, To Continue To Chisel On Your Bonus, To Push You Around On Jobs That You Can Not Make Out On—To Fire You Or Force You To Quit When You Protest Their Unfair Methods And To Tell You That Seniority Of Less Than One Year Means Nothing, As Far As Shift Preference Is Concerned.

Don't You Think It Time For All Ranco Workers To Take The Bulls Tail Away From The Company And Help Your Fellow Workers To Correct Those Evils, By ; Joining And Voting UAW-CIO.?

MR. OPP, DON'T YOU THINK YOU SHOULD PAY YOUR WORKERS FOR MEMORIAL DAY AND THE 4th OF JULY—IN LINE WITH OTHER DELAWARE AND COLUMBUS PLANTS?

UAW-CIO, Organizing Committee of Ranco, Inc.
Delaware & Plain City, Ohio.
17½ N. Sandusky St.
Delaware, Ohio. Phone 22661.

JOIN UAW-CIO

RESPONDENT'S EXHIBIT No. 9

Delaware 8-6-53

JUST A REMINDER!

Picture of two persons—one holding flowers and box, entitled:
 "No kidding. Do you like to give presents to the boss?"

UAW-CIO agreements, negotiated with managements, protects the worker against unfair layoffs, unfair transfers, proper recalls after layoffs, promotions, and the right to new or better paid jobs. Under the protection of UAW-CIO contracts, it is not necessary for workers to date the boss, cut his lawn, paint his house or bring him garden produce in order to receive fair treatment he is entitled to in accordance to his or her seniority.

Now that our Forced Vacation Period is over, we wonder how many other Ranco workers were entitled to unemployment insurance during this layoff?

Did management advise You to file a claim with the Ohio State Employment Office? If you did not file, we understand you may file within a sixty day period. Even if you are not entitled to unemployment insurance, you may be entitled credit for your one week waiting period. In case you are laid off again during your credit period, you will not be required to lose an extra week compensation. If in doubt, we advise you to call at the unemployment office and file your claim, or check with the union office for further advice.

RANCO SENIORITY MEANS NOTHING!

It has been called to our attention, that the so called seniority protection at Ranco, was ignored a week before the shut down for inventory. Workers were told, seniority means nothing during a short layoff. New workers were transferred to departments, a few days prior to the layoff,

Respondent's Exhibit No. 9

and were permitted to work the extra week, while older workers within the department was laid off for a two week period. Nightshift workers lost an extra week, while the day shift was permitted to work. Why? Was it planed to save the Company the Ten Cent Night Shift Bonus?

Yes, Maybe You Was One Of The Workers, not effected by this unfair layoff, but how do you know, when and were the Axe Will Fall Next???

WHAT CAN I DO ABOUT IT?

If you have not signed a UAW-CIO authorization card, don't put it of any longer. Your promise of voting for the union, without signing a card, will not produce an NLRB election. The UAW-CIO has no intentions of filing for an election prematurely. Lets make it 100% UAW-CIO, and show management that we really want and need a good union to represent us and protect our interest in collective bargaining, so we may have real job security. Lets Go Fellow Workers, Get On The UAW-CIO Band Wagon. It Wont Be Long Now Before We Can Have Real Protection, The UAW-CIO; Way.

By; UAW-CIO, Organizing
Committee of Ranco, Inc.
17½ N. Sandusky St.,
Delaware, Ohio. Phone 22661.
8/3/53

TRANSCRIPT OF TESTIMONY**October 12, 1953****BEFORE THE****NATIONAL LABOR RELATIONS BOARD****EIGHTH REGION****Case No. 8-CA-847**

In the Matter of:

Ranco, Inc.,

Respondent

and

International Union, United Automobile, Air-
craft and Agricultural Implement Work-
ers of America, UAW-CIO,

Complainant

Council Chambers, City Hall,
Delaware, Ohio,

Monday, October 12, 1953.

Pursuant to notice, the above-entitled matter came on
for hearing at 10:00 a.m.

Before:

Charles W. Schneider, Trial Examiner.

Appearances:

Bernard Ness, Esq., Ninth-Chester Building, Cleveland,
Ohio, appearing on behalf of the General Counsel.Eugene B. Schwartz, Esq., Stanley, Smoyer & Schwartz,
970 Union Commerce Building, Cleveland, Ohio, andMr. B. J. Einhart, 601 W. Fifth Avenue, Columbus 1,
Ohio, and

*Proceedings***1A**

Mr. W. R. Opp, Vice-President, 601 W. Fifth Avenue,
Columbus 1, Ohio, and

Mr. Howard Reynolds, Employee Counselor, Route 42,
Delaware, Ohio, appearing on behalf of Ranco, Inc.,
the Respondent.

Lowell Goerlich, Esq., 500 Security Building, Toledo 4,
Ohio, and

Mr. Charles Bethel and

Mr. Sigmund A. Grzenda and

Mr. Reuben Peters, 17½ N. Sandusky Street, Delaware,
Ohio, appearing on behalf of International Union,
United Automobile, Aircraft and Agricultural Imple-
ment Workers of America, UAW-CIO, the Com-
plainant.

* * * * *

9.

Trial Examiner Schneider: That is, there is no ques-
tion but what you did prohibit Union representatives, there
was a rule prohibiting the Union representatives who are
not Company employees from distributing Union literature
on Company property?

Mr. Schwartz: That is correct.

* * * * *

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W. R. OPP, a witness called by and on behalf of General
Counsel, being first duly sworn, was examined and testified
as follows:

Cross-examination

* * * * *

Q. Are you employed by Ranco, Inc.?

Testimony of W. R. Opp

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A. I am.

Q. And what is your occupation?

A. Vice-President in charge of manufacturing.

* * *

Q. Now, since the plant has been in operation, has the Company ever recognized any bargaining representative in the Delaware Plant of Ranco, Inc.?

A. We have not.

Q. Does the Company have any written rule regarding solicitations?

A. Yes.

* * *

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Q. Is that posted on the plant premises?

A. Yes.

* * *

Q. (By Mr. Ness) I show you General Counsel's Exhibit Number 2 which you handed me before and ask you if that is the notice you referred to?

A. It is.

Q. Now, was that posted in the plant, the Delaware Plant, on or

15

about the date appearing below, November 29, 1950?

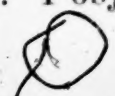
A. Yes.

Q. And has such notice been posted since such date?

A. Yes, I believe it has.

Q. Now, is it a fact that the Company does not permit representatives of any labor organization at any time to distribute literature on the Company's premises at the Delaware Plant?

Mr. Schwartz: Just a moment. I object to the use of



Testimony of W. R. Opp

the word "representatives" in the question, as to whether it refers to an employee.

Mr. Ness: I am referring to non-employees.

Trial Examiner Schneider: That is conceded, isn't it?

Mr. Schwartz: I thought so.

Mr. Ness: All right, I think we can agree on that. The Company doesn't allow Union representatives non-employees to distribute Union literature on the Company's premises?

Mr. Schwartz: That is correct, at any time.

Mr. Ness: At any time, all right.

Q. (By Mr. Ness) All right, regardless of which labor organization is involved, is that right?

A. That is true.

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Q. (By Mr. Ness) Has it been generally known by the employees that non-employees cannot distribute literature on the Company's premises?

A. Yes.

Q. And that has been through the posting of this notice, General Counsel's Exhibit 2?

A. Yes.

Q. Is this your signature appearing thereon, is it not?

A. Yes.

Trial Examiner Schneider: On the record.

Mr. Ness: I will propose this stipulation. May it be stipulated that General Counsel's Exhibit 3 is the letter sent by Reuben Peters, International Representative, UAW-CIO, dated January

17

28, 1953, to the Company at the address shown above, and that the letter was received by the Company; that General

Testimony of W. R. Opp

Counsel's Exhibit 4 is the reply to the letter, that is General Counsel's Exhibit 3, dated January 30, 1953, addressed to Reuben Peters, International Representative, UAW-CIO?

Mr. Schwartz: It may be so stipulated.

* * * * *

Q. (By Mr. Ness) Mr. Opp, I will show you General Counsel's Exhibit 5, which purports to be a sketch of the plant, the Delaware plant. Was that sketch prepared at your direction?

A. Yes.

* * * * *

Q. (By Mr. Ness) Does that diagram accurately reflect the Delaware's plant's premises, and the immediately surrounding area?

* * * * *

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Q. (By Mr. Ness) I hand you General Counsel's Exhibits 6, 7

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and 8, and ask you whether or not you know whether this literature was distributed by Union representatives non-employees, to employees at or near the plant gates?

A. It was.

Q. And that was distributed in about January of this year?

A. I recognize the first two as January. This one I don't recall exactly.

Q. But you do recall it was distributed by Union representatives non-employees?

A. Yes.

Q. And you do not permit distribution of General Counsel's Exhibit 6 through 8 and similar literature by

Testimony of W. R. Opp

Union representatives non-employees on the Company's premises at any time, is that right?

A. That is correct.

Q. And you would not permit any literature pertaining to Union organization to be distributed by Union representatives non-employees on your premises at any time, is that right?

A. That is correct.

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Cross-examination

Trial Examiner Schneider: All right.

Q. (By Mr. Schwartz) There is a badge system in the plant, is there not?

A. There is.

Q. And the purpose of the employees passing by either the front or the rear guard house is to permit the guard to identify employees as they pass the guard house, is that correct?

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A. That is correct.

Q. Have you had opportunity to observe distribution of Union literature by non-employees, representatives of the Union?

A. Yes, I have.

Q. And from what station or from how close?

A. From the, within the building, the Building Number 1, 1½, 2 as indicated on this drawing.

Q. I might ask now, I note no reference to Building 1½. Is that a space or the building between Building Number 1 and Building Number 2?

A. It is indicated on the drawing as the factory office.

Testimony of W. R. Opp

That would be the space between buildings 1 and 2.

Q. And then the space between the buildings 2 and 3 would be Building 2-A, is that correct?

A. $2\frac{1}{2}$ it is commonly known as.

Q. $2\frac{1}{2}$ I am sorry.

A. $2\frac{1}{2}$.

Q. Now, just for the purpose of clarification, there are a total of how many buildings starting with Building Number 1?

A. There are eight buildings.

Q. There are a total of eight buildings, and according to General Counsel's Exhibit 5 each of them is 40 by 300, is that correct?

A. That is correct.

Q. In between each two buildings there is a flat one-story fairly low building which in each instance would be called $\frac{1}{2}$, is that

35

correct?

A. Correct.

Q. The factory office is Building $1\frac{1}{2}$, is that correct?

A. That is correct.

Q. Just for the purpose of clarification Building 1-A is the building, part of which is shown at the lefthand side of the plat, and that is a storage building, is that correct?

A. That is correct.

Q. Now, you state that you had opportunity to see non-employees distributors of Union literature from the Union itself, is that correct?

A. That is right.

Q. Can you identify by month or date the period or time when you saw such distribution?

A. I would say most any month from January up to about September of this year.

Testimony of W. R. Opp

Q. Well, let me ask it this way. Was it on more than one occasion?

A. Oh, yes, it was on several occasions.

Q. All right. Now, referring to General Counsel's Exhibit 5 or I may refer to it as a plat from time to time, you state that the non-employee representatives of the Union generally station themselves at Point X but covered at various times the space which is circled here, is that correct?

A. That is correct.

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Q. I note here on the east gate about 21 feet in from the fence line is a stop sign, is it?

A. Yes.

Q. And I note 15 feet from the west, from the fence line of the west gate a stop sign, is that correct?

A. That is correct.

Q. Now, will you describe the size of that sign?

A. Oh, as I recall it they are probably 30 to 36 inches in diameter. It is pretty much a standard State Highway stop sign.

Q. It is the usual yellow and black that is used by the State Highway Department, is it not?

A. That's right.

Q. As a matter of fact it was supplied by the State Highway Department, was it not?

A. I believe that is correct.

Q. The speed limit on U. S. Route 42, to and from, to Delaware and to Plain City in one direction and the other is what at the point of your plant?

A. On the highway in front of our plant is posted at 35 miles an hour.

Q. U. S. 42 is a very heavy thoroughfare, is it not?

A. Very heavily traveled.

Testimony of W. R. Opp

Q. It is heavily policed, is it not, by the Highway Patrol?

A. That is right.

Q. What is the fact as to employees or visitors to the plant

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being warned as to stopping before entering U. S. Route 42?

A. Our guards have reported at various times employees who have a tendency to fail to stop, and we have talked to these employees, either their foremen or their personnel department representatives trying to get them to cooperate with the city police and the State Police, in the interest of safety, to come to a full stop before entering Route 42.

Q. As a matter of fact, state law requires a full stop at that point, does it not?

A. That is correct.

Q. There has been some reference to an approximate 200 cars leaving the plant at the end of the first shift, and I understood that the cars when they leave can leave through either the west or the east gate, is that correct?

A. That is correct.

Q. Now, have you seen some cars which leave by the west gate which then cut across Route 42 and travel east up toward Plain City?

A. Say that again?

Q. Well, all right. Do some cars which come out on the east gate, the east gate, then turn left and travel west toward Plain City?

A. Yes.

Q. And some cars which come out the west gate, then turn right and travel toward Delaware, is that correct?

A. That is correct.

Testimony of W. R. Opp

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Q. That results in quite a jamming-up of traffic on Route 42 in front of the plant, does it not?

A.. That is correct.

Q. When 200 cars leave the plant in a period of about 15 minutes, does it cause quite a bit of jamming up in the driveway leading out of the plant?

A. It does.

Q. (By Mr. Schwartz) Do cars stop at or before the property line when they leave the plant?

A. Yes.

Q. Have you seen the Union representatives distributing literature to cars which are leaving the plant at the end of the shift?

A. Yes.

Q. To what percentage of the cars so leaving the plant have the outside Union representatives distributed Union literature?

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The Witness: I have observed the Union representatives passing out literature to the cars leaving the plant, and I would say many times they have been able to distribute their literature practically 100 percent to the people who wanted the literature.

Mr. Ness: I object and move that the answer be stricken. The witness has no way of knowing whether the people wanted the literature or not from what he was observing.

Q. (By Mr. Schwartz) I would like to have the witness explain what he means by "to the people who wanted the literature"?

Testimony of W. R. Opp

A. I would base my statement this way. The people who wanted the literature had their windows rolled down and their arm extended. In my opinion the people who did not want the literature had their windows rolled up. That is the way I characterize it because some people went past that point with their windows completely rolled up and closed.

* * * * *

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Trial Examiner Schneider: That those people, if this is his testimony, I am not sure yet that it is, if it is his testimony that those people who extended their hands received literature, but that those who did not or who kept the windows in the car rolled up did not, that testimony may stand as observed facts. Now what argument should be made from it is quite another matter. Is it your testimony that on all occasions when employees have extended their arms from the car, that the organizers or the distributors gave them literature?

The Witness: Yes.

* * * * *

Q. (By Mr. Schwartz) Did you observe Union representatives non-employees distribute Union literature in departing cars where either the driver or passenger did not extend his arm outside the car for it?

A. Yes.

* * * * *

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Q. (By Mr. Schwartz) I have had marked for identification, Mr. Opp, a letter dated May 6, 1953, addressed to a Mr. Burke. Was there a Mr. Burke connected with the Delaware plant at that time?

A. There was.

Q. And what was his full name?

Testimony of W. R. Opp

A. Paul Burke.

Q. What was his capacity?

A. Production manager.

Q. I have had marked for identification—by the way, that letter was signed by Rhoea L. Myers. I have had marked for identification as Company Exhibit 1-B a carbon copy of a letter from Mr. Paul M. Burke to Mrs. Rhoea L. Myers, in Delaware, Ohio. Do you know whether that letter of which this is a carbon copy was mailed?

A. Yes.

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Q. (By Mr. Schwartz) Mr. Opp, referring to General Counsel's Exhibit 2, state whether or not employees have from time to time distributed literature on Company property?

A. Yes.

Q. (By Mr. Schwartz) Mr. Opp, I have had marked for identification as Company Exhibit 2, two pages headed "List of People Who Passed Union and Anti-Union Literature Inside Front Gate of Delaware Plant." Now, on those pages appears headings such as Union—3-31-53; Anti-Union—4-28-53, with various names and I assume clock numbers, is that correct?

A. Yes.

44

Q. At your request, some time before March 31, 1953, did the guards keep a record of which employees distributed literature on Company premises?

A. Yes, they did.

Q. The references to "front gate" and "back gate" are to what, Mr. Opp?

Testimony of W. R. Opp

A. To the pedestrian gates adjacent to the guard house.

Q. In other words, you are referring to the gates by the guard houses, the front and the back guard houses?

A. That's right.

* * * * *

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Mr. Ness: We are not contending that employees did not distribute literature. Our position is that the non-employees should be permitted to distribute the literature, and that the Company has no right to restrict it to employees.

* * * * *

Trial Examiner Schneider: Well, as I understand it, there is no dispute that employees whether Union agents or representatives or not, were permitted to distribute Union literature on their own time on the premises. You are not contesting that?

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Mr. Ness: No, they have done it.

* * * * *

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Trial Examiner Schneider: Mr. Ness isn't taking the position the employees were fearful of distributing Union literature.

Mr. Ness: I am not saying they are. I am admitting they did.

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it. I am not saying they were happy or fearful about it.

* * * * *

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Mr. Schwartz: I have had marked for identification as Company's Exhibit 3 a badge, circular badge, approxi-

Testimony of W. R. Opp

mately two and a half inches in diameter, bearing across it American Flags, about which reads the word "Vote," and below "Join UAW-CIO," and at the bottom half of the circle, "Organizing Committee." * * *

* * * I will ask that, for a stipulation that these badges were supplied by the Charging Union?

Mr. Ness: Rather than paid for?

Mr. Schwartz: Yes.

Mr. Ness: We will so stipulate.

Mr. Schwartz: Mr. Goerlich?

Mr. Goerlich: It is agreeable.

Q. (By Mr. Schwartz) Mr. Opp, at various times have employees within the plant worn badges in the form of Company Exhibit 3 inside the plant at work?

A. Yes.

Q. Did the Company make any effort to require employees to remove or otherwise deface these badges?

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A. No.

Mr. Schwartz: Mr. Ness and Mr. Goerlich, I am holding up a T-shirt on which appears in blue about six inches in diameter the emblem of the International Union, United Automobile, Aircraft & Agricultural Implement Workers, and above which appears in red in letters varying from one to two inches in size, "Vote," and below which appears in red in letters varying from one-half inch to one-inch in size the words "UAW-CIO," and ask for a stipulation that T-shirts in this form were supplied by the Charging Union to some of the employees at the Plant here involved?

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Q. (By Mr. Schwartz) Mr. Opp, at various times dur-

Testimony of W. R. Opp

ing the past, during the CIO organizing campaign, have you seen employees at work in the plant wearing T shirts such as that which I now hold in my hand and which I have just described in the form of a requested stipulation?

A. Yes.

Q. Did the Company take any action with respect to requiring employees to discontinue wearing such shirts?

A. No.

* * * * *
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Recross-examination

Q. (By Mr. Ness) Mr. Opp, how many employees are wearing T shirts at the plant at the present time similar to the one shown to you by Mr. Schwartz?

A. At the present time?

Q. Yes.

A. I don't know exactly. In fact for probably the last two or three weeks I don't think I have seen any.

Q. And within the two months previously?

A. Oh, it is hard to say. I have counted as many as 15, I'd say, at some given times. I don't recall the exact date but during this campaign.

* * * * *
55

Q. (By Mr. Ness) How many employees within the past month have

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worn badges similar to Respondent's Exhibit 3?

A. I don't know as I could honestly answer that question.

Q. Can you give us an estimate?

A. Oh, within the past month, just from what I have

Testimony of W. R. Opp

seen, maybe half a dozen.

Q. Now, you have testified that guards have reported employees that failed to stop at the stop signs shown on the plat, is that right?

A. Yes.

Q. And there are employees who still fail to stop at stop signs, isn't that a fact?

A. I believe that is true. It is common at stop signs.

Q. If there is no car in front of them and there is no traffic on Route 42, the employees at times goes straight out onto the highway without stopping at all, isn't that a fact?

A. Sometimes.

Q. Now, you testified that you have observed Union representatives non-employees distributing the literature at or near the plant gates, and that employees that put their hands out of the cars received literature, is that right?

A. Yes.

Q. Have you ever heard employees speaking to the Union representatives at that point?

A. Yes.

Q. Near the gate?

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A. Yes.

Q. Where were you at the time?

A. In my car either entering or leaving the plant gates.

* * * * *

Q. Now, at times there are cars lined up on the driveway waiting to get out, isn't that right?

A. Yes.

Q. And when the front car which is right by the highway shoots out into the highway, at times other cars shoot out onto the highway right after it, isn't that right, without any further stop?

Testimony of W. R. Opp

A. Not too often.

Q. Not too often?

A. I am speaking primarily of the first shift. I don't —not so much any more. I don't observe the second shift so I couldn't

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say for sure about that, but that isn't too much true on the first shift.

Q. Which gate do you normally go out, the east or west gate?

A. I normally go out the west gate.

Q. And at times at the end of the shift when cars are leaving at the west gate, is that just one lane, incidentally?

A. It is one lane out and one lane in.

Q. On the west gate?

A. On the west drive.

Q. So at times when employees are leaving at the end of the first shift they are heading north down the driveway towards the gate and the road, and at the same time a car can be coming in that same west gate?

A. That is true.

Q. There is no guard or any other person directing traffic at the plant gates, is there?

A. At the outside plant gate, no.

Q. There is no traffic light at the plant gate, is there?

A. Unfortunately not.

* * * * *

Trial Examiner Schneider: Just a moment, please, Mr. Opp. Did I understand that this so-called west gate is used exclusively for—strike the west—so-called east gate is used exclusively for leaving the plant?

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The Witness: That is right.

Trial Examiner Schneider: And the west gate is used

● *Testimony of W. R. Opp*

both for entering and leaving?

The Witness: Correct.

Trial Examiner Schneider: And that entrance is wide enough to accommodate two lanes of cars, one entering and one leaving?

The Witness: That's right.

Trial Examiner Schneider: How about the east gate, how many lanes of cars use that?

The Witness: Normally there are two lanes abreast which line up at that gate.

Trial Examiner Schneider: Are those entrances marked into lanes?

The Witness: On the surface of the roadway?

Trial Examiner Schneider: Yes.

The Witness: No.

Trial Examiner Schneider: At the bottom of General Counsel's Exhibit 5, the plat, in the middle is a notation, "Entrance To New Lot." What does that signify?

The Witness: After the plant had been in operation for a period of time, our original employees' parking lot became inadequate, and we purchased an additional tract of land east of our original purchase and made it into a second parking lot for the employees. That is commonly referred to as the new parking lot.

Trial Examiner Schneider: Oh, then, this plat does not show

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all your property there?

The Witness: Oh, no.

Mr. Schwartz: May I interrupt the Trial Examiner? You will appreciate it doesn't show all of our parking lot. That extends way down, nor does it show the Building 4, 5, 6, 7 and 8.

Trial Examiner Schneider: Then there are actually

Testimony of W. R. Opp

eight buildings 40 by 300 feet?

Mr. Schwartz: Oh, that is right.

Trial Examiner Schneider: I was confused about that. All right, I think that is all I have.

Mr. Ness: Let me clarify something.

Q. (By Mr. Ness) As far as the entrance to the new lot, they still have to come up these two driveways that we referred to?

A. One driveway.

Q. At the east and west gate?

A. Coming in just the one driveway.

Q. Oh, the one driveway. Let me ask you one further question. You have indicated, you have mentioned there were stop signs in each of the driveways. There is no traffic light, is that right?

A. That is correct.

Q. There are no stop signs for traffic coming in?

A. No stop signs but a speed limit sign. I can't—I believe it is ten miles an hour, twelve miles an hour, or fifteen. I have forgotten exactly which. Our purpose was to try and drag them down.

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Q. Where is that located?

A. That is located on the west-boundary fence of the west driveway. I would say approximately 30 to 40 feet inside the property line.

Q. As a matter of fact, employees don't observe that anyway, do they, do employees observe those signs?

A. Yes.

Q. Do all of them?

A. By far the majority. We have gotten pretty good cooperation on safety within our own parking lot and driveway areas and entering the highway.

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Testimony of Reuben Peters

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REUBEN PETERS, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. By whom are you employed at the present time?

A. The International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO.

Q. What is your position with that organization?

A. At the present time International Representative.

Q. How long have you been an International Representative of said organization?

A. For twelve years.

Q. Were you at one time a member of the International Executive Board?

A. I was.

Q. When was that?

A. 1939 and 1940.

Q. Is one of your duties in connection with being an International-

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al Representative to organize employees of different industrial plants?

A. Yes.

Q. Have you been conducting an organizing campaign at the Ranco's Delaware Plant?

A. I have.

Q. When did you first start?

A. I was assigned on January 2nd and started the actual organizing of the plant January 11, 1953.

Q. I'll ask you whether or not you distributed hand bills at or near the plant gates referring to the Delaware

Testimony of Reuben Peters

Plant?

A. Yes.

Q. When did you start distributing such hand bills, what month?

A. January, the month of January.

Q. Of this year?

A. Of 1953.

Q. And about how many approximately have you distributed to date?

A. Twenty-five.

Q. I'll hand you General Counsel's Exhibit 5 which is a plat of the Delaware Plant.

Trial Examiner Schneider: I am going to interrupt, Mr. Ness. Is it 25 hand bills that you have distributed or do you mean 25 different occasions?

The Witness: On 25 different occasions, that is correct.

Mr. Ness: I am sorry that wasn't clear.

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Q. (By Mr. Ness) Incidentally, with respect to General Counsel's Exhibit 8, can you tell me about when that was—strike that. With reference to General Counsel's Exhibit 8, did you distribute that hand bill at or near the plant gate?

A. Yes.

Q. Can you tell me about when it was that you distributed said hand bill?

A. February 25, 1953.

Q. Now, referring to General Counsel's Exhibit 5, I'll ask you to note where the X appears near the east gate. Do you notice that?

A. Yes.

Q. In yellow pencil?

A. Yes.

Q. Have you stood there and distributed hand bills?

A. No, not where the X is shown.

Testimony of Reuben Peters

Q. Where have you stood?

A. Approximately in the center of that gateway.

Mr. Schwartz: Just a moment, sorry, there are two gates.

Mr. Ness: The east gate I said.

Mr. Schwartz: The east gate? Oh, I'm sorry.

The Witness: The east gate.

Q. (By Mr. Ness) Now did you stand in the center there at the east gate?

A. Yes.

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Q. Have you distributed hand bills to employees in cars when they were leaving the plant?

A. Yes.

Q. I am speaking now only of the east gate.

Mr. Schwartz: May I interrupt?

Mr. Ness: Sure.

Mr. Schwartz: Okay, thank you.

Q. (By Mr. Ness) Referring to the driveway leading up to the east gate, is there any dividing line or markers to divide that driveway into lanes?

A. No, not to my knowledge.

Q. Now, when the cars approach the gate exits, are they in two lanes?

A. Yes.

Mr. Schwartz: Which one are you referring to now, the west gate?

Q. (By Mr. Ness) No, I am still speaking strictly of the east gate?

A. East.

Q. Where do you stand in connection with the two lanes of traffic?

A. In between the two lanes, in the center.

Q. How do you distribute your hand bills to the people

Testimony of Reuben Peters

in the cars?

A. The cars to the east, the lane to the east, either the driver

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or the passenger, we give the hand bills to those people, and on the west side of the gate, west group coming out, of cars, we have quite a problem there because it is opposite the driver's side, and many times the workers will stop temporarily there to take hand bills, and then the people become rather disturbed in the back of them, the line of cars and they start honking their horns and telling them to move on, to get out of there. It is very difficult to get the people on the inner lane.

Q. Do you throw the hand bills into the cars?

A. No, we don't throw them into the cars unless they open the window and request a hand bill.

Q. You only give it to them if they request it?

A. That's right.

Q. Now, at times when you are there distributing about how many cars would you say are lined up ready to leave the plant in each of those two lanes?

A. Oh, at times there is possibly 20 cars lined up.

Q. Now, you say you stand in between the two cars?

A. Yes.

Q. About how much space ordinarily do you have between the two cars?

A. Oh, possibly three feet.

Q. Now, again referring specifically to the east gate, do the cars all go out and head in one single direction?

A. No, they do not.

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Q. Will you tell us in what direction they go?

A. The cars go out from the east gate, they head west toward Plain City, some of them, some head east toward

Testimony of Reuben Peters

Delaware, and others go down Curtis Street.

Q. When you say "down Curtis Street," you mean they cross Highway 42?

A. They cross directly across the highway.

Q. Now do cars on the western side of the driveway on the east gate at times make a right turn and head east towards Delaware?

A. Yes.

Q. And do the cars in the eastern lane at the east gate at times make left turns and head west towards Plain City?

A. That's right, they do.

Q. Now, at times when you say there were cars lined up ready to leave and you were distributing hand bills, have you heard any comments by employees as they passed you?

A. Yes, on many occasions.

Q. (By Mr. Ness) What comments have you heard?

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A. Many of the lead cars into the lead will stop to ask a representative questions pertaining to the organizing drive, and the workers in back of them become impatient and start honking their horns, and many times bump into one another's bumpers there, and create quite a disturbance in the plant.

Q. Have they made any comments to you?

A. Yes, they made comments to the extent of, "Why don't you get out of the way, we are in a hurry to go home, let the cars pass."

Q. Have you noticed stop signs at the plant gates, each of the plant gates?

A. Yes.

Testimony of Reuben Peters

Q. Referring now to the stop sign at the east gate, do all cars stop at the stop signs?

A. Oh, no, no, no, they don't.

Q. Well, can you estimate what proportion of cars stop at the stop signs?

A. I'd estimate close to ten percent of the cars do not stop for the stop sign.

* * * * *

69.

Q. (By Mr. Ness) You have distributed literature during the winter months, too, have you not?

A. Yes.

Q. January and February?

A. That's right.

Q. What percentage of the drivers stop to accept hand bills during the winter months?

A. Approximately 50 percent.

* * * * *

Q. (By Mr. Ness) And what percentage of the drivers during the warm weather would stop to receive hand bills?

A. Approximately 75 percent.

Q. And during the winter months have you observed whether or not the windows on the drivers side are more often shut rather than during the warmer weather?

A. Yes.

Q. Now, have you distributed literature to incoming, to persons in incoming cars?

A. I have.

Q. Where do you stand, where did you stand when you distributed?

A. Into the west entrance and into the center of that entrance.

Q. Now, do cars coming in use only the west entrance,

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Testimony of Reuben Peters

the west gate?

A. Yes, yes.

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Q. Now, from what do—well, from what directions do cars come in?

A. They come in from the west, from the east, and from the north.

Q. Well, you say from the west and east, you mean from 42?

A. Yes, 42.

Q. And from the north you mean Curtis Street?

A. Yes.

Q. Now, at times when you were distributing literature to incoming cars, had you observed more than one car coming towards the plant from the east on 42?

A. Oh, yes.

Q. And when a car approaches the plant premises and makes a left turn on 42?

A. Yes.

Q. And comes in the west gate, is that right?

A. That's right.

Q. And normally the driver would have to wait to see that no traffic is coming, heading east on 42, is that right?

A. That's right.

Q. Now, did you observe more than one car waiting to turn in who was coming from east on 42?

A. Yes.

Q. And what has happened when a car coming in stopped to receive hand bills when another car was behind it on 42?

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A. Well, it creates a dangerous hazard because the cars that try to slide in behind him block the highway for

Testimony of Reuben Peters

the oncoming traffic from the west, makes a very dangerous situation.

Q. You are speaking of the second car coming in?

A. Yes, that's right, cars and trucks.

Q. Now, with respect to this distribution, both incoming and outgoing cars, have you seen more than one person in cars at times?

A. Oh, yes.

Q. That is passengers including the driver?

A. Yes.

Q. Have you had any experiences where a passenger wants to stop and talk and a driver wouldn't?

A. Many times.

Q. What has happened then?

A. Well, the driver just keeps on going, he won't stop.

Q. Were you able to give the passenger a hand bill?

A. No, we were not.

Q. The driver didn't even stop there?

A. He would not.

Q. Are there any sidewalks paralleling the front entrances of the plant?

A. No, there isn't.

Q. Are there any sidewalks in the immediate area of the plant alongside Route 42?

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A. No.

Q. Actually all you have is the road and the shoulder, is that right?

A. That's right.

Q. Have you observed the number of residences both east and west of the plant alongside Route 42?

A. Yes.

Q. Will you describe approximately how distant they are from each other?

Testimony of Reuben Peters

A. On the corner of Curtis and Highway 42 which is across from the approach on each corner is a home, and the next building to the west I'd judge would be possibly 1500 feet from that intersection.

Q. And how far apart are the homes around that area?

A. Well, they are farm buildings, they are rural buildings. They stand possibly 1,000, 1,500 feet.

Q. Do you drive a car?

A. Yes.

Q. Are there any speed limit signs on Route 42 near the plant?

A. Yes.

Q. What do those signs say?

A. Thirty-five miles an hour.

Q. Have you observed cars riding on 42 past the plant?

A. Yes, many of them.

Q. From your observation do you know whether or not all the cars

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driving by observe the 35-mile speed limit?

A. Oh, no, many of them go by them 50 miles an hour or better.

Mr. Ness: You will stipulate that Route 42 is a duly designated U. S. state route?

Mr. Schwartz: Yes, I will.

Q. (By Mr. Ness) I will ask you to examine Respondent's Exhibit 2, the second page. I'll ask you whether or not to your knowledge any employees passed out any of the Union literature since June 2nd?

A. I didn't get your question.

Q. Since June 2nd?

A. Not to my knowledge.

Q. Have you offered it, have you offered any Union literature to employees to distribute since June 2nd?

Testimony of Reuben Peters

A. We have requested them to distribute since June 2nd:

Q. What happened?

A. They refused to distribute any further.

Q. Now, during the winter season did you distribute any literature when it was dark?

A. Yes.

Q. Are there any lights at the plant entrances?

A. There is.

Q. Did you experience any difficulty in distributing literature at that time?

A. Yes.

Q. What were such difficulties?

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A. Well, you couldn't determine how many people were in the cars when they were approaching you on account of the darkness.

Q. Why not?

A. Well, on account of the headlights usually being on their cars. You would be looking into the headlights.

Q. Was that true with respect to both incoming and outgoing cars?

A. Yes.

Q. Now, referring to distribution at that time at the west gate, do cars only use one lane coming in at the west gate?

A. No. On occasions they use two.

Q. And on occasions only one?

A. That's right.

Q. Now, at times have you observed that a car was leaving at the west gate at the same time that a car was coming in at the same gate?

A. Cars and trucks leaving while the other cars were coming in.

Testimony of Reuben Peters

Q. That was at the west gate?

A. That's right.

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Q. (By Mr. Ness) Have you observed any employees passing out literature not favorable to the Union?

A. Yes.

Q. Did you see such literature being distributed?

A. Near the guard house.

Q. Both guard houses?

A. Yes.

Q. Did you observe that from the plant entrance?

A. From the highway, yes.

Q. Were they distributing to the employees?

A. They were distributing to the employees.

Q. And were the employees in automobiles?

A. No, they were walking.

Q. Pardon?

A. They were walking.

Q. They were walking towards the parking lot?

A. Walking toward the plant.

Q. Coming in to work?

A. Coming in to work.

Q. They were walking from the parking lot past the guard house

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into the plant, is that right?

A. Walking from the plant past the guard house to the parking lot on the way out.

Q. On the way out? I see. Were you at the same time passing out hand bills at the gate?

A. Yes.

Testimony of Reuben Peters

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Cross-examination

Q. (By Mr. Schwartz) Mr. Peters, you just referred to people distributing literature opposed to the Union near both guard houses, to employees either coming from or going to the parking lot. You have also seen people at those same locations distributing Union literature; have you not?

A. Yes.

* * * * *

Q. Well, about how many occasions did you see people distributing literature opposed to the Union at these two guard houses?

A. I would say approximately three times.

Q. And on about how many occasions ~~did~~ you see people distributing Union literature at the guard house?

A. Six, about six or seven times.

Q. * * *

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When possibly 200 cars start leaving the plant at about the same time at the end of the first shift, almost automatically it causes a jam-up at the entrance or the exit of the plant, isn't that right?

A. Well, I think the highway would probably cause the jam-up.

Q. Yes. In other words, I am sorry, in other words, as they approach the highway almost automatically whether you are or are not there, isn't that right?

A. Yes.

Q. And there have been occasions on which you have been at the entrance and not distributing literature when cars behind the car just at the highway had honked at the car right at the highway, isn't that right?

Testimony of Reuben Peters

A. No.

Q. Have you never seen a jam-up at the highway when there was nobody distributing Union literature there?

A. No.

Q. You never heard cars honking at one another there?

A. No.

Q. When you were not distributing literature?

A. No.

Q. You referred to a situation where the driver of what you call the lead car would stop at the highway to ask you questions about the organizing drive, and that some workers in cars behind became impatient and honked?

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A. That's right.

Q. In other words, the drivers of these lead cars or the driver of the lead car stopped at the exit to talk to you, is that correct?

A. Yes.

Q. Isn't it a fact also that on occasions you came inside the fence line or the extension of the fence line to catch the drivers or passengers in cars as they were going out, and walked along with them almost to the highway?

A. Yes.

Q. And isn't it a fact that at the west gate you have done the same thing, that is, walked along the car within the property line itself, talking to a driver or a passenger?

A. Well, I wouldn't say walk, we probably run along side of the car.

Q. * * * Maybe I missed this, but as I understood this organizing drive started when you were assigned by I assume

Testimony of Reuben Peters

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your superiors in the International to organizing this Delaware Plant of Ranco on January 2, 1953?

A. I was assigned, received my assignment.

Q. You received your assignment from your superiors in the International?

A. Yes, sir.

Q. And you arrived here on January 11, 1953?

A. Yes, sir.

* * * * *

Q. If I told you that General Counsel's Exhibit 6, a circular entitled "Here Comes the UAW-CIO," and which has down at the bottom lefthand corner, "CS-1," was distributed on January 22, 1953, would you say that was the first circular that was distributed to the employees?

A. It is possible.

Q. All right. Well—

A. I think it is the first circular. The date I am not sure.

Q. The second circular then was the one that is entitled "The

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UAW-CIO is More than a Union," which has at the bottom lefthand corner, "CS-2," isn't that correct?

A. Yes.

Q. And that was approximately a week later, was it not?

A. That was on the 29th.

Q. Oh, yes, you have it on the 29th.

* * * * *

Q. (By Mr. Schwartz) And General Counsel's Exhibit Number 8 entitled or captioned "Your Right to Join a Union, You are Protected By Law," has on it a date

Testimony of Reuben Peters

2-25-53. Was that circular distributed on or about February 25, 1953?

A. Yes.

Q. (By Mr. Schwartz) I now show you a circular which has been marked for identification as Company Exhibit 5, captioned, "Have No Fear," and bearing a date at the bottom 3-6-53. Is it a fact that that circular was distributed by the UAW-CIO to the employees of the Delaware Plant on or about that date?

A. Yes.

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Q. (By Mr. Schwartz) I have had marked for identification a circular which is entitled, "Gripe Sessions," and have had it marked as Company Exhibit 6. It bears a date, March 26, 1953. Was that circular distributed by the UAW-CIO to the employees of the Delaware Plant on or about that date?

A. Yes.

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Q. (By Mr. Schwartz) Mr. Peters, I have had marked for identification as Company Exhibit 7 a circular entitled, "Common Lies About Strikes by UAW-CIO," which indicates by Company marking only that it was distributed at the Delaware Plant about May 13, 1953. Can you state whether or not that was distributed by the UAW-CIO to the employees of the Delaware Plant at or about that date?

A. It was distributed but I wouldn't verify the date.

Q. All right, I am satisfied with that.

Testimony of Reuben Peters

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Q. (By Mr. Schwartz) I now show you what has been marked for identification as Company Exhibit 8, being a circular bearing a cartoon at the top, a heading, "Facts About Strikes," and being both front and back, and ask you whether that circular was distributed by the UAW-CIO on or about June 5, 1953?

A. I can't verify the date but it was distributed by the UAW-CIO.

Q. I should add to the employees of the Delaware Plant?

A. Yes.

Q. (By Mr. Schwartz) I now show you a circular which has been marked for identification as Company Exhibit 9, entitled "Just A Reminder," with a sub-heading, "No Kidding, Do You Like To Give

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Presents To The Boss," and a cartoon bearing an imprinted date of 8-3-53, and ask you whether that was distributed by the UAW-CIO to the employees of the Delaware Plant on or about the date shown?

A. Yes.

Q. (By Mr. Schwartz) Is it not a fact that the CIO, UAW-CIO did distribute to some employees of the Delaware Plant badges in the form shown in evidence or in evidence as Company Exhibit 3?

A. Not at the Delaware Plant, no.

Q. Oh, I mean employees of the Delaware Plant not necessarily at the plant?

A. Yes.

Q. And the UAW-CIO also supplied, supplied, that is a better word, to some employees of the Delaware Plant

Testimony of Reuben Peters

pocket combs and pencils bearing the imprint of UAW-CIO?

A. Yes.

Q. Is that right, and the same is true with T shirts of the type that was described this morning?

A. I don't know about the type you have there.

Q. Well, the UAW-CIO did supply to some employees of the Delaware

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Plant T shirts bearing the insignia and some reference to the UAW-CIO, did they not?

A. Yes.

* * * * *

Redirect Examination

Q. (By Mr. Ness) With reference to these hand bills, Respondent's Exhibits 5 through 9, you were asked whether or not they were distributed by the UAW-CIO. I will ask you whether they were distributed by employees or by Union representatives non-employees.

A. Well, I'd say the majority of them at least was distributed by International representatives.

Q. Where?

A. At the gates.

Q. Now, were you the only Union representative non-employee that distributed Union hand bills?

A. No.

* * * * *

Recross-examination

Q. (By Mr. Schwartz) How many others were there?

A. Oh, they varied from time to time.

Q. Pardon me?

A. It varied from time to time again.

Testimony of Reuben Peters

Q. How many were there at any one time?

A. Three.

Q. And among the other Union representatives non-employees were

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included Mr. Charles Bethel and Mr. Grzenda, isn't that correct?

A. That is right.

• • • • •

W. R. OPP, recalled as a witness by and on behalf of General Counsel, being first duly sworn, was examined and testified further as follows:

Further Recross-examination

Mr. Ness: I will ask the reporter to mark this as General Counsel's Exhibit 9.

• • • • •

93

Q. Do you know whether copies of that document were distributed to employees?

94

A. Oh, yes, they were distributed.

Q. Where?

A. At the front and back guard house pedestrian gates.

Q. When you say the pedestrian gates you are referring to the pedestrian gates at the guard house?

A. Yes.

Q. Did you observe it yourself, the distribution?

A. No, I didn't.

Q. Were those copies distributed by employees?

A. Yes.

Testimony of W. R. Opp

Trial Examiner Schneider: Where was that distribution?

The Witness: At the little gates right adjacent to each one of the guard houses.

Trial Examiner Schneider: You referred to a front and back entrance, did you?

Mr. Ness: There are two guard houses.

Mr. Schwartz: The front and back gates, guard house, guard house, this is the front and that is the back.

Q. (By Mr. Ness) The gates you refer to so we are sure there is no mistake on the record are not the gates which lead out of the Company's premises?

A. No. For the benefit of the Examiner let me clarify a little bit. We have a problem, we did have a problem in getting employees to park even distributed over the parking lot, so in order to clear the entrances we have both front and back entrances of the

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building in order to facilitate entrance to those clock entrances to the building. We have a front and back guard house so they can approach the plant from either entrance.

Trial Examiner Schneider: I notice there is a guard house directly opposite the Building 1-A, and I assume that is what you refer to as the back guard house?

The Witness: That's right.

Trial Examiner Schneider: There is another on the northeast corner of Building Number 1. That is the one which you referred to as the front guard house?

The Witness: That's right.

• • • • •

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Q. I notice on all these cards there are dates passed out at Delaware and the date appearing thereafter. Are those the dates when these cards were distributed?

Testimony of W. R. Opp

A. To the best of my knowledge they are the dates they were distributed.

Q. And when were they distributed?

A. Again at the pedestrian gates adjacent to the front and back guard house.

Q. And they were distributed by employees, is that right?

A. Yes.

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Q. And General Counsel's Exhibit 20 was distributed on or about May 20, 1953, is that right?

A. Is that the date on there? Yes, right.

Q. And that, too, was distributed by employees at the guard houses?

A. That's right.

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OCIE HARTER, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

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Q. (By Mr. Ness) Are you employed at the present time by Ranco, Inc., at the Delaware Plant?

A. Yes, I am.

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130

Q. And you also distributed some of the Anti-Union literature at the guard house, did you not?

Testimony of Ocie Harter

A. That's right.

* * * * *

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Cross-examination

139

Q. Miss Harter, did you distribute any of the literature?

A. Yes.

* * * * *

Q. And was that, where was that literature distributed by you?

A. At the front and back gate.

Q. In other words, that was by the guard houses?

A. That's right.

Q. Was it during your working hours or not?

A. It was not.

* * * * *

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Q. Isn't it a fact that you and other employees distributed literature which you had prepared in many cases at the same spot and at the same time that other employees were distributing literature which the CIO had prepared?

A. That's right.

* * * * *

Redirect Examination

Q. (By Mr. Ness) You distributed this at the guard house, did you not?

A. That's right.

Q. And did you distribute it to employees coming in or going out of the plant?

Intermediate Report and Recommended Order

Carolina Mills, 92 NLRB 1141, enf'd. 190 F. 2d 675
(C. A. 4)

Caldwell Furniture Co., 97 NLRB 1501, enf'd. 199 F.
2d 267 (C. A. 4)

Mooresville Mills, 99 NLRB 572

Carthage Fabrics Corp., 101 NLRB 541, 546, 552, enf'd.
(C. A. 4), June 10, 1953, No. 6590

Monarch Machine Tool Co., 102 NLRB 1242, enf'd. 33
LRRM 2488 (C. A. 6)

Remington Rand Co., 103 NLRB No. 25

Grand Central Aircraft Co., 103 NLRB No. 101

The test laid down in the LeTourneau case, and since adhered to, is whether the prohibition of distribution of union literature on the employer's premises places "an unreasonable impediment on the freedom of communication essential to the exercise of employees rights to self-organization." If the prohibition results in such an impediment, it may not be enforced unless "special circumstances make the rule necessary in order to maintain production or discipline."

This principle has been explained as an accommodation, necessitated by the circumstances, between the employer's unquestionable right to control the use of his property and the equally unquestionable right of employees under the Act to "freely discuss and be informed concerning

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their collective bargaining rights and the correlative right of the union to discuss with and inform them concerning the matters involved." *N. L. R. B. v. Lake Superior Lumber Co.*, 167 F. 2d 147, 151 (C. A. 6).⁴

⁴As has been indicated in footnote 3, *supra*, the Lake Superior case involved a lumber camp where employees lived as well as worked.

Testimony of Ocie Harter

A. Mostly going in. I distributed to the janitors coming out.

Q. And distributed to people going in?

A. Yes.

Q. And employees had to pass there before they went into the plant, isn't that right?

A. That's right.

* * * * *

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GENE FORD, a witness called by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Ness) Will you state your name and address, please?

A. Gene Ford, Route 3, Delaware.

Q. Mr. Ford, at the present time are you employed by Ranco, Inc. in the Delaware Plant?

A. Yes, sir.

* * * * *

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Cross-examination

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Q. Subsequently a number of copies of the printed circular or reproduced circular, General Counsel's Exhibit 9 were given to you by Ocie Harter and you distributed them, is that correct?

A. Yes.

Q. Where did you distribute them?

Testimony of Gene Ford

A. At the front and back gates of Rancho.

Q. On your own time?

A. Yes, sir.

Q. And others assisted you, is that correct?

A. Yes, sir.

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Intermediate Report and Recommended Order

In the LeTourneau case the Board said the following (p. 1260):

... employees cannot realize the benefits of the right to self organization guaranteed them by the Act, unless there are adequate avenues of communication open to them whereby they may be informed or advised as to the precise nature of their rights under the Act and of the advantages of self organization, and may have opportunity for the interchange of ideas necessary to the exercise of their right to self organization Speech is not the only mode of communication by which self organization is effected, nor is it sufficient that this channel alone be free. Effective organization requires the use of printed literature and of application and membership cards, and these modes of communication are also protected by the Act.

The right to distribute under such a principle is not absolute, however. As, I think, the cases disclose, the accommodation must be adjusted to the circumstances. In sum, where it is impossible or unreasonably difficult for a union to distribute organizational literature to employees entirely off the employer's premises, distribution on a nonworking area, particularly one devoted exclusively to the parking of automobiles, may be warranted, unless permitting the distribution will result in undue interference with business operations or prohibition is otherwise reasonable necessitated. The burden is upon the employer to show the existence of circumstances warranting the prohibition. *Caldwell Furniture Co.*, 97 NLRB 1501.⁵ "And

⁵In the *Caldwell* decision, the Board said:

The Supreme Court in *N. L. R. B. v. LeTourneau of Georgia*, 324 U. S. 793 (1945) held that the Board had properly placed the burden of proof on the employer to show the existence of special circumstances relied upon to justify the existence of such a rule. No such showing was made in this case by the Respondent.

TRANSCRIPT OF TESTIMONY

October 13, 1953

WILLIAM STANLEY, a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. I see. By the way, I think you said that you—did you say that you distributed some of this literature that had been printed by the Company and prepared by the employees?

A. That's right.

Q. What shift did you work on?

A. I worked on the first shift.

Q. How many times did you distribute literature?

A. Twice.

Q. When did you distribute literature?

A. When did I?

Q. Yes.

A. I distributed the literature that I had before I went to work

in the morning.

Q. In other words, that would be before seven o'clock in the morning?

A. That's right.

Q. Ocie Harder at that time worked on the second shift, didn't she?

A. Yes.

Testimony of William Stanley

Q. And Ocie Harter also distributed literature in the morning before the first shift, didn't she?

A. That's right.

Q. So that means that she completed her work, her regular work about 11:30 at night, twelve o'clock at night, and would be outside the plant before seven o'clock in the morning to distribute literature, is that right?

A. That's right.

Q. The same is true with some other second shift employees who distributed before the first shift starting, isn't that right?

A. Yes.

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W. R. OPP, recalled as a witness by and on behalf of General Counsel, being first duly sworn, was examined and testified as follows:

237.

Recross-examination

Q. Mr. Ott, in connection with your company you have three Columbus plants, is that correct?

A. That's right.

Q. And just for the purpose of the record the main Columbus plant

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and the offices are at 601 West Fifth Avenue, Columbus 1, Ohio?

A. That is correct.

Q. You also have a Russell Street Plant which primarily does fabrication work?

A. That is right.

Q. And you have the Essex Avenue Plant which pri-

Testimony of W. R. Opp

marily is your tubular plant, is that correct?

A. That's right.

Mr. Schwartz: I realize I am leading him, but this is all—

Q. (By Mr. Schwartz) At those three plants the production and maintenance employees are represented and have been for some years by Lodge 1654 of the International Association of Machinists, is that correct?

A. That's right.

Q. And the tool room employees and model shop employees by Lodge 55, of the International Association of Machinists, is that correct?

A. That is correct.

* * * * *

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Mr. Schwartz: Mr. Examiner, we ask for a stipulation by counsel for the General Counsel, I guess that is the phrase, that on or about March 27, 1951, there was filed in the Eighth Regional Office of the National Labor Relations Board at Cleveland, Ohio, a charge against the Delaware plant of Ranco, by the International Association of Machinists, this charge being docketed as 8-CA-512, the charge in substance being that the same allegations which are contained in Paragraphs 5 and 6 of this Complaint, the charge being as follows: "On November 21, 1950, the Union representatives

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were stopped distributing organizing literature and removed from the property of Ranco, Inc., located on Highway 42, Delaware, Ohio, by the city police at the request of the Company, and is still refusing to permit the distribution of organizing literature, thereby denying and interfering with employees' rights guaranteed in Section 7 of the National Labor Relations Act;" that this charge was

Testimony of W. R. Opp

investigated by Field Examiner Walter Reisbach who had at least one conference with—strike that last about the charge was investigated. That the charge was on August 6, 1951, with the approval of the Regional Director, withdrawn without prejudice.

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Mr. Ness: I will stipulate to the statements made by Mr. Schwartz, although I see no relevancy in so far as concerning the present matter:

Trial Examiner Schneider: Very well.

Mr. Schwartz: I also ask for a stipulation that on March 20, 1952, there was filed with the Regional Office, Eighth Region, National Labor Relations Board, a charge which was docketed Number 8-CA-682, this charge being filed by the International Association of Machinists, against the Delaware Plant of Ranco, and the charge reading as follows: "On or about February 28, 1952, the Company, by its officers, agents and employees, interfered with, restrained

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and coerced its employees in the exercise of their rights guaranteed in Section 7 of the National Labor Relations Act, by refusing to permit the distribution of organizing literature at the entrance to a parking lot of the Company, with contacting the employees on the public highway or off the employer's property which it limited to a few employees who walk to and from work or stop their automobiles to receive the Union literature," and that this charge was on May 29, 1952, with the approval of the Regional Director, withdrawn without prejudice.

Mr. Ness: My same comment will apply. I will agree that the facts are correct but I see no relevancy.

Trial Examiner Schneider: Very well.

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**INTERMEDIATE REPORT AND RECOMMENDED
ORDER**

Case No. 8-CA-847

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act (61 Stat. 136) upon charges filed by the above-named Union, complaint issued by the General Counsel of the National Labor Relations Board, and answer duly filed, was heard, pursuant to due notice, in Delaware, Ohio, on October 12 and 13, 1953.

The allegations of the complaint are that the Respondent, Ranco, Inc., engaged in unfair labor practices at its Delaware, Ohio, plant in violation of Section 8 (a) (1) of the Act by (1) preventing nonemployee union representatives from distributing union literature on the Respondent's parking lot; and (2) sponsoring, assisting, and contributing financial and other support to antiunion groups among its employees. The answer, admitting some factual allegations of the complaint and supplying others, denied the commission of unfair labor practices.

All parties were represented by counsel, participated in the hearing, and were afforded full opportunity to present and to meet evidence, to engage in oral argument, and to file briefs. A brief filed by the Respondent on November 16, 1953, and a supplement thereto filed on November 25, 1953, have been duly considered.

From my observation of the witnesses, and upon the basis of the entire record in the case, I make the following:

Intermediate Report and Recommended Order

Findings and Conclusions

I. Commerce and labor organization

It is admitted, and found, that the Union is a labor organization within the meaning of Section 2 (5) of the Act, and that the Respondent is

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engaged in commerce within the meaning of Section 2 (6) of the Act.¹

II. The unfair labor practices

A. The issues

Briefly stated there are two issues: (1) Whether the Respondent may prevent nonemployee union organizers from distributing union literature on the Respondent's parking lot at the Delaware plant; and (2) whether the Respondent may legally assist a group of employees opposed to the Union, by printing their literature for distribution to the employees.

B. The literature distribution issue

1. The premises

The Respondent's Delaware plant is located in the town of Delaware, Ohio (population 12,200) at the city limits, 1.7 miles from the center of the city. Normally the plant employs about 700 people; at the time of hearing it em-

¹The Respondent is an Ohio corporation with principal offices located at Columbus, Ohio, and operating five plants in Ohio: three in Columbus, one in Plainfield, and one in Delaware. At the Delaware plant, the only one involved in the present proceeding, the Respondent manufactures thermostatic controls for refrigerators, automobile heaters, and other equipment. In the course of its operations at Delaware the Respondent purchases annually raw materials valued in excess of \$1,000,000 more than 50 percent of which is shipped to the Delaware plant from points outside the State of Ohio. Respondent annually produces finished products at the Delaware plant valued in excess of \$1,000,000, of which in excess of 75 percent is shipped to points outside the State of Ohio.

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ployed about 598; in January 1953 the number was approximately 900. —

The Respondent's property occupies a 28 to 30 acre plot of ground on the south side of United States Highway No. 42, a 20-foot 2-lane heavily traveled interurban roadway running roughly east and west. The entire property is surrounded by an 8-foot high wire fence, broken by two gates about 30 feet apart. The westerly gate is 25 feet in width, the easterly one 36 feet. Both open on the highway and serve as entrances to and exits from the Respondent's premises. The gates are set back 30 feet from the highway. The plot of ground between the gates and the highway is public property. There are no sidewalks. The surrounding neighborhood is rural in character.

Directly inside the entrances is a vehicular parking lot with a capacity of some 600 cars for the use of employees and visitors to the plant. Access to the plant and offices is from the parking lot. However, in order to enter the plant or offices, one must pass through either 1 of 2 smaller gates in another fence separating plant and office buildings from the parking lot. These gates are flanked by guard houses, at which guards are stationed to check persons desiring to enter the plant and office area. Employees wear identification badges. It is thus seen that access to the parking lot does not insure access to the working areas.

Other than taxicabs, there is no public transportation in the city of Delaware. A high percentage of the Respondent's employees come to work in private automobiles; not over 1 percent arrive on foot. A survey made by the Respondent on September 24, 1953, discloses that 220, or 36.8 percent of the employees live in the city of Delaware. It further

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discloses that of the 598 total then employed:

335 (56 plus %)	Live within 5	miles of the plant
25 (4 plus %)	" " 5 to 10	" " " "
123 (20 plus %)	" " 10 to 15	" " " "
97 (16 plus %)	" " 15 to 20	" " " "
16 (2 plus %)	" " 20 to 25	" " " "
1	Lives over 25 miles	

The plant operates on a three-shift basis: 7:30 a. m. to 3:30 p. m.; 3:30 p. m. to midnight; and the third shift on an irregular starting basis, sometimes beginning during, sometimes at the end of the second shift. On September 24, 1953, 401 employees worked on the first shift, 181 on the second, and 13 on the third. A survey made by the Respondent on that day revealed 204 cars on the parking lot during the first shift, 90 during the second, and 9 on the third.

The west gate opening on Highway 42 is both an entrance and an exit, the east gate is used only as an exit. Opposite these gates, and on the farther (north) side of the highway, is an entrance to Curtis Street, which runs into the town of Delaware in a northerly direction.

Coming into the plant, cars approach from both directions on Highway 42, as well as from Curtis Street. Leaving the plant, they follow a similar pattern. Thus cars exiting by either gate may turn either east or west on Highway 42, or cross the road to enter Curtis Street. It requires about 15 minutes to clear the parking lot at the end of the first shift; 5 to 10 minutes at the end of the second. Thus, roughly 14 or more cars per minute pass the gates—at the east gate in a double lane—and headed in any one of 3 directions. Highway 42 being a well-traveled 2-lane roadway, the resultant traffic problem is apparent.

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There is no traffic light at that point, and apparently no regular or systematic police direction. However, there are State highway department stop signs inside the gates, warning employees to stop before entering the highway, and the road itself is patrolled by State highway policemen. Some employees, hurrying to get home, have a tendency to ignore the stop signs, despite cautionary warnings given by the Respondent. However, 90 percent comply. There is also a sign inside the west gate warning incoming drivers to reduce speed to 10 miles an hour.

2. The rule

Since November 1950, the Respondent has had in effect a posted and publicized rule to the following effect:

1. Delaware Plant employees are permitted to distribute literature on Company property, but not on Company time.
2. Any such distribution must be done in such a manner that the plant buildings will not become littered.

Pursuant to the rule, the Respondent has uniformly permitted employees to distribute literature at the guard house gates between the plant and the parking lot. Both union and antiunion literature has been passed out there by employees without hindrance from the Respondent.

Within the plant, the Respondent has permitted employees to wear union badges while at work, as well as T-shirts bearing the union emblem.

The Respondent, citing the distribution rule as justification, denied permission in May 1953 to nonemployee representatives of the Ladies Auxiliary of the American Legion and the Veterans of Foreign Wars to sell

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Buddy poppies at the plant gates.

On March 27, 1951, the IAM (International Association of Machinists) filed a charge of unfair labor practices with the Board alleging that in November 1950, at the request of the Respondent, IAM representatives (presumably non-employees) were prevented by city police from distributing literature on company property at the Delaware plant. This charge was withdrawn on August 6, 1951, with the approval of the Regional Director. On March 30, 1952, another charge—withdrawn on May 29, 1952, with the approval of the Regional Director—was filed by the IAM, alleging that on February 28, 1952, the Respondent refused permission to IAM representatives (presumably nonemployees) to distribute union literature at the plant entrances. The instant charge was filed by the UAW-CIO on May 8, 1953.

3. Exclusion of nonemployee union
representatives

On January 11, 1953, the charging Union here—the UAW-CIO—began an organizational campaign among the Delaware plant employees, and commenced the distribution of union literature at a point directly outside the east and west gates, on the 30-foot strip of public property. On January 28, 1953, the Union, by letter, requested permission of the Respondent to distribute union literature on company property, citing as reason therefor, the “dangerous traffic hazard” at the entrance gates.

Under date of January 30, 1953, the Respondent, by letter, denied the request. The Respondent's letter stated:

This acknowledges receipt of your letter of January 28, 1953, requesting permission to distribute union literature on Company property.

Intermediate Report and Recommended Order

For your information, the long-standing policy of this company, which has also been in effect during previous organizing campaigns, is to restrict distribution of literature of any sort on Company premises to Company representatives and employees of the plant. Your request is therefore denied.

Since that time nonemployee union representatives have distributed union literature to cars leaving the plant on some 25 different occasions outside the east and west gates; the representatives generally taking their stand between the exiting lanes of traffic on the plot between the gates and the highway. On occasion, however, they have been observed by Respondent's vice president, W. R. Opp, on company property 30 feet within the gates—but the Respondent has tried to prevent this encroachment when it observed it.

Success at distribution outside the gates has been variable. Thus, at times, Vice-President Opp has observed 100 percent distribution of literature by the organizers to the occupants of exiting cars desiring to receive it.² On the other hand, Union International Representative Peters has had the following difficulties in distribution at the gates: Cars sometimes do not stop; when they do there is no opportunity for discussion with employees, because of the press of cars behind seeking to leave; standing between the lanes, the distributor is both a traffic hazard and assumes the risk of injury, particularly at night; though occupants of a car may desire literature, the driver may not wish to stop; drivers behind, desirous of leaving, exhort the distributor to get out of

²Literature is given by the organizers only to those who indicate that they wish it.

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the way. In the west gate, where there is both an incoming and outgoing lane, distribution to incoming cars creates an additional traffic problem by reason of the fact that it halts cars entering behind—possibly stopping them on the highway itself. The weather also, according to Peters' testimony, affects the success of the distribution: In inclement weather cars are generally closed, and acceptances fall substantially.

4. Conclusions as to refusal to permit literature distribution by nonemployees

The right of employees or union representatives to carry on union activity on an employer's premises has come before the Board and the courts in a variety of situations.³

With respect to the right to distribute union literature on company automobile parking lots connected with a plant, or at entrance gates, the question has been before the Board and the courts in a number of cases, the following of which are the principal ones:

N. L. R. B. v. LeTourneau Co., 324 U. S. 793, 54 NLRB 1253.

United Aircraft Co., 67 NLRB 594, 600, 606

Newport News Dress Co., 91 NLRB 1531

³The following are illustrative, though not exhaustive, cases and situations: Republic Aviation v. N. L. R. B., 324 U. S. 793 (employee solicitation of union membership inside plant); Monolith Co., 94 NLRB 1358 (distribution of union literature inside plant); N. L. R. B. v. LeTourneau Co., 324 U. S. 793 (employee distribution of union literature in company parking lot); N. L. R. B. v. Cities Service, 122 F. 2d 149 (C. A. 2) (right of sailors to be visited aboard ship by nonemployee union representatives, in the investigation of grievances); N. L. R. B. v. Lake Superior Lumber Co., 167 F. 2d 147 (C. A. 6) (right of nonemployee union representatives to visit employees in lumber camp for union organizational purposes); N. L. R. B. v. Stowe Spinning Co., 336 U. S. 226 (right of nonemployee union organizer to use meeting hall in company-owned town for organizational purposes); Marshall Field Co., 98 NLRB 88, 200 F. 2d 375 (C. A. 7); Associated Dry Goods Corp., 103 NLRB No. 28 (right of nonemployee union organizers to gain access to non-public areas of department store for organizational purposes).

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the result reached ~~to~~ the same though the distribution is sought to be made by outside organizers rather than by plant employees." Remington Rand Co., 103 NLRB No. 25.

Of the cases cited above involving the distribution of union literature on plant parking lots, in all but 2 (Newport News Dress Co. and Mooresville Mills) the circumstances were such that the right of distribution was upheld. In the Newport News case the employer's property measured 50 by 120 feet and its approximately 60 employees left the premises by a single gate opening on a public street. Busses loaded across the street from the plant. The Board found that union literature could be "easily distributed to employees as they leave the gate."

In the Mooresville Mills case the facts were similar: busses loaded at the street and literature, the Board found, could "easily be distributed to employees as they enter and leave the gate."

The Respondent here cites no special circumstance or operational reason for the exclusion of nonemployee distributors of union literature from the parking lot.

In my judgment, the precedents and the circumstances require the conclusion that the Respondent's refusal to permit nonemployee union

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representatives to distribute union literature on the parking lot constituted an unreasonable impediment to self-organization.

As has been seen, almost half the employees live 5 or more miles from the plant, and there is no public transportation other than taxicabs. All but a fraction of the employees arrive by private car, and thus most are driven directly onto the parking lot. Traffic conditions at the parking lot gates at the time of shift changes as described in the testimony indicate that the distribution of literature

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there is highly impracticable. At best it is hazardous; in twilight and inclement weather it could be dangerous. The busy entrance to a busy main highway seems neither a safe nor a practicable location for the distribution of literature to the occupants of passing automobiles. This is so even though the vehicles may, as required, stop before entering the highway. The driver intent on observing traffic conditions is not likely to be in the position or mood to give his full attention to the distributor, who thus becomes a traffic hazard himself.

That union representatives did distribute outside the entrance gates on some 25 occasions between January and October seems no more suggestive of the adequacy of that technique than it is of the hardness of the distributors and the ineffectiveness of other available modes of communication.

The Respondent points, however, to one distinction between the situation here, and that found generally in the prior Board decisions cited above. In most of those cases dealing with parking lots, literature distribution was completely prohibited; whereas in the instant case employees are allowed to distribute on the premise so long as they do it on their own time without littering.

If this were a matter of first impression, this distinction might be substantial and impelling. The decisions, however, seem contrary. In the Caldwell Furniture and Carolina Mills cases (and in others as well) there were nonemployee distributors. Enforcement decrees upholding the right of distribution were entered by the Fourth Court of Appeals in the Caldwell and Carolina cases, on the basis of the LeTourneau decision—which involved employee distributors and a general no-distribution rule. And in Carolina Mills there was no evidence of any rule forbidding employee distribution. In the Remington Rand case, 103

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NLRB No. 25, Caldwell Furniture is cited as authority for the principle that "the result reached is the same though the distribution is sought to be made by outside organizers rather than by plant employees."⁶

The chronology of the cases seems to support the conclusion of the Remington Rand decision. Thus, Newport News and Mooresville Mills—involving nonemployee distributors—were dismissed, but on the premise that literature was easily distributable at the gate or across the street. Carolina Mills and Caldwell Furniture were decided after Newport News but before Mooresville Mills. If employee status were the controlling—or even a relevant—factor, it would seem that some of those decisions would have adverted to it. None do. Similarly, if complete prohibition of distribution were the condition for finding exclusion of nonemployees improper, the Fourth Court of Appeals should have denied enforcement in Carolina Mills—where there was no evidence of any distribution rule affecting employees. That the issue is not specifically raised in any

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of the cases seems, under the circumstances, more indicative of its irrelevance, than of failure to consider it.

Thus, in my judgment, the precedents require the conclusion that the Respondent's refusal to permit nonemployee union organizers to distribute union literature on the Respondent's parking lot constituted, under the circumstances, an unreasonable impediment to self-organization, and an interference, restraint and coercion of employee rights guaranteed in Section 7 of the Act.

⁶And see also *Bonwit Teller, Inc.*, 96 NLRB 608, 632:

That it is the right of union organizers to address the employees that (is) directly involved, and not the right of individual employees to do it, does not seem to be a significant distinction. *N. L. R. B. v. Stowe Spinning Co.*, 336 U. S. 226.

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This is not to say that the Respondent may not impose reasonable and proper regulations governing such distribution. Remington Rand, Inc., 103 NLRB No. 25; Maryland Drydock Co., 183 F. 2d 538 (C. A. 4).

C. The assistance issue

In the early part of 1952, the International Association of Machinists (IAM) sought to organize the employees of the Respondent's Delaware plant. During that campaign some of Respondent's employees were active for and others against the IAM. Some circulated and signed anti-union petitions. Among those employees who took an active part in opposing the IAM in 1952 were Ocie Harter, Bob Goff and Gene Ford. Finding it impractical to print their own literature in opposition to the union, Ford and Goff requested the Respondent to print the literature for them. The Respondent granted the request, at the same time posting a notice in the plant informing the employees generally of this action. A representation election was held in which the IAM was defeated.

As has been seen, the UAW-CIO began its organizational campaign in January 1953. On or about February 25, 1953, the UAW-CIO distributed to the employees at the Delaware plant a circular entitled "Your Right To Join A Union—You are Protected By Law." This circular stated, in part:

Don't be kidded by management or their hirelings, this time, with a lot of phoney promises, that they will not be required to keep. You know what happened last year.

Don't be fooled by signing anti-union petitions. Ask yourself what the pay-off was or is for the person who sponsors such petitions.

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Ford, Goff, Harter and others who had opposed the IAM in the 1952 campaign interpreted this and subsequent UAW circulars of similar vein as reflecting upon themselves, untruthfully intimating that they had been "paid off" by the Respondent for their efforts, were "stooges" for management, and "company-trained" to prevent employee organization. Resentful and indignant, Ford and Goff approached Howard Reynolds, employee counsellor, and asked whether the Respondent would defray the expense of printing literature prepared by them in answer to that of the UAW-CIO. Reynolds called Vice-President Opp of the Respondent and explained the situation to him. Opp informed Reynolds that the Respondent would bear the cost of printing the literature. Under date of March 10, 1953, the Respondent posted the following notice to the employees:

Again this year, as a result of the Union campaign now going on some of our employees who are opposed to any Union have requested that we stand the cost of printing some literature which they want to distribute to our employees.

They told us that they wanted no Union to interfere between them and the Company, but that they did not have the money to spend on printing.

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At their request, we used the material supplied by them and had the printing done at our cost.

W. R. Opp

V. P. Mfg.

For convenience, this group which opposed the UAW-CIO in 1953, may be referred to as the Ford group. The group had no formal organization, though Ford, Goff,

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Harter, William Stanley, and Myrtle Morrison—all rank-and-file employees—seem to have been the most prominent in its activities. A number of meetings were held, several at the Chamber of Commerce, others at homes, restaurants, bars, and street corners. Attendance varied from 20 downwards—usually 8 to 10. No minutes were kept; the group had no treasury and no officers.

Between early March and the latter part of August 1953, the Ford group prepared literature—in the form of circulars, poems, cartoons, and two letters—dealing with the issues in the union campaign. The Respondent printed approximately 18 of these pieces which (except for the letters, which the Respondent mailed directly to employees) the Ford group then distributed. One of the letters was from employees Harter, Morrison, Ford and Stanley to Vice-President Opp; the other was an open letter to the UAW-CIO, and was signed by a number of employees. Both were printed by the Respondent and mailed by it to employees; the first at the request of the Ford group; the second by the Respondent on its own initiative.⁷

Beyond correcting typographical errors, the Respondent did not edit the material submitted to it. In the case of the poems the group submitted more than Opp desired to print. He returned them to the group, which then selected about nine, which the Respondent printed. With those exceptions, the Respondent printed all the material submitted.

Except for the letters which were mailed, the Respondent, after receiving the finished literature from the printer, turned it over to the Ford group. It was then distributed

⁷Vice-President Opp's testimony is to this effect. I therefore consider the mailing of the second letter to be the Respondent's independent act on its own account, and not an act of assistance to the Ford group—though it may have had that incidental effect.

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at or near the guard houses on the parking lot by employees on behalf of the group on their own time.

About 1000 copies were printed of each item, except in the case of the cartoons. Six hundred were printed of each of those. The total cost to the Respondent of printing the literature was about \$186.

o In addition to the Ford group's literature, the Respondent also issued other literature during the campaign on its own account in which it set forth its views of the issues and the facts raised by the campaign. This literature the Respondent itself distributed to the employees, apparently mainly through the mails.

Conclusions as to the Assistance Issue

The General Counsel contends that the action of the Respondent in printing the literature for the Ford group, violated Section 8 (a) (1). The General Counsel does not contend that the group constituted a labor organization, and relies on the Board's decisions in *Cleveland Trust Co.*, 102 NLRB 1497 and *Timken Detroit Axle Co.*, 98 NLRB 790. The Respondent contends that those cases are inapposite, and that it had the right to print the literature for the Ford group because of false and defamatory.

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charges in the UAW-CIO literature.

It is not contended by the General Counsel that any of the literature printed by the Respondent, either that of the Ford group or of the Respondent itself, contained any threat of reprisal or promise of benefit. Nor is there any contention that the Respondent committed a violation by conducting its own campaign against the Union or by issuing literature on its own behalf. The sole issue is whether the Respondent was entitled to assist and subsidize the Ford group's campaign.

Intermediate Report and Recommended Order

The Cleveland Trust case involved similar subsidization of employee groups. The Board, in finding that such action was unlawful, summed up its conclusions in that case as follows:

It is clear that the Respondent directly assisted and participated in the campaign of the employee committees to defeat the Union in the impending election. The Respondent gave Moffitt [employee organizer of the committee] the names of anti-union employees who would serve on the committee, suggested changes in the final draft of his letter to the employees, and, by paying for the distribution of the 3 letters, in effect made a financial contribution to both committees. That the Respondent had the right to voice its own non-coercive views, perhaps similar to those contained in the committee letters, did not privilege it to make common cause with and assist the antiunion committees in the manner described above. Concerted activity either for or against a union is a protected right of employees. We regard the subsidization of such activity—even at the request of the employee participants—to be an unwarranted intrusion upon the right of employees freely to choose their own collective bargaining representative.

The Cleveland Trust case is now pending in the Sixth Court of Appeals upon the Board's petition for enforcement of its order.

In my opinion, that decision and the related case of Timken-Detroit Axle Co., (cited in the Cleveland Trust decision as authority) are applicable and controlling here. The Respondent seeks to distinguish those cases. However, I do not perceive any differences of sufficient substance as, in my judgment, to warrant distinction. That the UAW-

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CIO literature may have been false or defamatory might— if asserted in that connection (and it is not)—bear on the Union's right to distribute such literature on the Respondent's premises: *Maryland Dry Dock Co.*, 183 F. 2d 538 (C. A. 4). But the question at issue here is the right of the Respondent to assist and make contributions to contending groups of employees in a matter of union organization. In such a context the assertions in the Union's literature would seem to have no apparent bearing. Other asserted distinctions seem insubstantial.⁸

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It is consequently found, upon the authority of the *Cleveland Trust* and *Timken-Detroit* decisions, that the Respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, by assisting an employee group to oppose the selection of a bargaining representative by the Respondent's employees, and by contributing support to such group.

⁸The Respondent also points out that of the members of the Board at the time of the *Timken-Detroit* and *Cleveland Trust* cases, only two—members *Murdock* and *Peterson*—are presently on the Board: and of these member *Murdock* has expressed his disapproval of the judgments in those cases. The Respondent's brief suggests that the question is now therefore an open one and the cases without binding force.

The Trial Examiner is not free, however, to disregard precedents and principles established by the Board, and not disapproved by the courts or modified by Congress, merely because the composition of the Board has changed. An orderly system of administrative adjudication imposes upon its sub-judiciary the obligation to follow existing precedent and policy until revised by appropriate authority. The Board may, within its sound discretion and subject to review, re-examine those policies and interpretations of its predecessors which it considers no longer apposite, or perhaps erroneous. The Trial Examiner, whatever his personal inclination, has no such authority. Once the Board has made its re-examination, the Trial Examiner is obligated to give the resulting principles conscientious effect as the applicable law until authoritatively abandoned or modified. But, as he must be careful to follow, so is the Examiner bound not to initiate, revision of statutory policy or interpretation. Such restraints are essential to responsible administration of the statute.

I therefore refer the Respondent's comment to the Board for its consideration.

Intermediate Report and Recommended Order

III. The remedy

Having found that the Respondent has engaged in certain unfair labor practices, it will be recommended that the Respondent cease and desist therefrom and take the following described remedial action designed to effectuate the policies of the Act:

(1) Rescind its plant rule respecting distribution of union literature on its premises, insofar as the rule prohibits the distribution of union literature by union representatives on its parking lot at the Delaware plant; except that the Respondent may impose reasonable regulations or controls not of such character as to deny full access to employees for the purpose of effecting such distribution. *Remington Rand, Inc.*, 103 NLRB No. 25.

(2) Cease assisting, supporting, or contributing to any employee groups organized to oppose the selection of a collective bargaining representative. *The Cleveland Trust Company*, 102 NLRB 1497.

(3) Post an appropriate notice informing the employees of its action.

In view of the nature of the violations, I do not deem a general cease and desist order appropriate or warranted.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

Conclusions of Law

1. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-CIO, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging

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in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

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RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the Respondent, Ranco, Inc., Delaware, Ohio, its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Prohibiting the distribution of union literature by union representatives on its parking lot except pursuant to reasonable regulations or controls not of such character as to deny full access to employees for the purpose of effecting such distribution.

(b) Assisting, supporting, or contributing to any employee groups organized to oppose the selection of a collective bargaining representative.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Rescind its plant rule respecting distribution of literature on its premises, insofar as the rule prohibits the distribution of union literature by union representatives on the Respondent's parking lot at the Delaware plant; except pursuant to reasonable regulations or controls not of such character as to deny full access to employees for the purpose of effecting such distribution.

(b) Post at its Delaware, Ohio, plant copies of the notice attached hereto, marked Appendix A. Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the Re-

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spondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Eighth Region, in writing, within twenty (20) days of the receipt of this Intermediate Report and Recommended Order what steps the Respondent has taken to comply herewith.

It is further recommended that unless on or before twenty (20) days from the receipt of this Intermediate Report and Recommended Order the Respondent notifies the aforesaid Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

Dated at Washington, D. C., this 8th day of March 1954.

(s) Charles W. Schneider,
Trial Examiner.

APPENDIX A

NOTICE TO ALL EMPLOYEES AT THE
DELAWARE PLANT

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

We Will Not prohibit the distribution of union literature by union representatives, on our parking lot, except pursuant to reasonable regulations or controls not of such character as to deny full access to employees for the purpose of distribution.

We Will Not assist, support, or contribute to any employee groups organized to oppose the selection of a collective bargaining representative.

Ranco, Inc.

(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

EXCEPTIONS OF RANCO INC.

Case No. 8-CA-847

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Now comes Ranco Inc., the respondent herein, and files these Exceptions to the Intermediate Report, affecting its Delaware, Ohio, plant.

Exception No. 1. Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

"The three plants operated by respondent in Columbus, Ohio, are under contract with two locals of the International Association of Machinists."

on the ground that said finding is pertinent and is required by the record.

See Transcript 237, line 22, through Transcript 238, line 18.

Exception No. 2. Respondent excepts to the failure of the Trial Examiner to make the following findings of fact:

"The facts in this case must be viewed against Respondent's 'clean' background. Of six (6) various charges filed against the Respondent, prior to the date of the charge filed in the instant case, all but one were withdrawn after investigation. The one that was tried (Case 9-C-1938) resulted in dismissal by the Board."

on the ground that said findings are material and required by the record.

See Company's Exhibit 10. As to the Board's Decision in Case No. 9-C-1938, see 57 NLRB 425. Also see Intermediate Report (hereinafter referred to as "I.R."), page 4, lines 3-13.

Exception No. 3. Respondent excepts to the failure of the Trial Examiner to make the following findings of fact, in addition to

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those made at I.R. 3, lines 53-56:

"Pursuant to its policy of permitting all employees uniform privileges to distribute literature at the guard house gates, employees passed out union literature at those spots on about 6 or 7 different occasions; and employees distributed literature in opposition to the union on about 9 different occasions."

on the ground that said findings are material and required by the record.

In support of the above exception, see Company Exhibit 2, and testimony of G. C. Witness Peters at Tr. 77, lines 8-24. Also testimony of Witness Harter at Tr. 140, lines 1-5.

Exception No. 4. Respondent excepts to the failure of the Trial Examiner to make the following finding of fact:

"There was no contention or proof that employees refrained from distribution of literature within the plant proper or at the guard house gates because of fear."


on the ground that said finding is material and is required by the record:

See the following colloquy:

"Trial Examiner Schneider: Mr. Ness isn't taking the position that the employees were fearful of distributing Union literature.

Mr. Ness: I am not saying they are. . . ." (Tr. 47, lines 23-25.)

Exception No. 5. Respondent excepts to the under-scored portion of the following finding of fact:



Exceptions of Ranco Inc.

"Cars sometimes do not stop; when they do there is no opportunity for discussion with employees, because of the press of cars behind seeking to leave;" (I.R. lines 54-56.)

on the ground that the underlined portion is not pertinent.

Neither the Complaint nor the recommended order go to the right of union representatives to be permitted a forum for "discussion" on the employer's premises.

Exception No. 6. Respondent excepts to the following conclusion:

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"The test laid down in the LeTourneau case, and since adhered to, is whether the prohibition of distribution of union literature on the employer's premises places "an unreasonable impediment on the freedom of communication essential to the exercise of employees' rights to self-organization". If the prohibition results in such an impediment, it may not be enforced unless "special circumstances make the rule necessary in order to maintain production or discipline." (I.R. 5, lines 32-38.)

on the ground that said conclusion is erroneous under the facts in this case. See the discussion of the LeTourneau case in the Brief filed in support of these exceptions.

Exception No. 7. Respondent excepts to the failure of the Trial Examiner to make the following conclusion:

"There was no showing here that the respondent's practice herein made it 'impossible or unreasonably difficult' for the union to distribute organizational literature to respondent's employees. While it may not have been as convenient for the union to distribute

Exceptions of Ranco Inc.

literature to the employees at the fence, or by employees at the guard gates or within the plant proper, convenience is not the applicable test."

on the ground that said conclusion is required by the record and by the law.

See Exceptions Nos. 2, 3, 4, and I.R. 3, line 44 through I.R. 4, line 1. Also see the discussion of this point in the Brief in support of these exceptions.

Exception No. 8. Respondent excepts to the underscored portion of the following conclusion:

"That union representatives did distribute outside the entrance gates on some 25 occasions between January and October seems no more suggestive of the adequacy of that technique than it is of the hardness of the distributors and the ineffectiveness of other available modes of communication. (I.R. 7, lines 19-23.)

on the ground that said conclusion is not supported by, and is contrary to, the record.

See Exception No. 7 and the references in support thereof.

Exception No. 9. Respondent excepts to the following conclusion:

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"If employee status were the controlling—or even a relevant—factor, it would seem that some of those decisions would have adverted to it. None do. Similarly, if complete prohibition of distribution were the condition for finding exclusion of non-employees improper, the Fourth Court of Appeals should have denied enforcement in Carolina Mills—where there was no evidence of any distribution rule affecting employees. That the issue is not specifically raised in

Exceptions of Ranco Inc.

any of the cases seems, under the circumstances, more indicative of its irrelevance, than of failure to consider it." (I.R. 7, line 50 through I.R. 8, line 2.)

on the ground that said conclusion is erroneous and lacks support in the record.

Exception No. 10. Respondent excepts to the failure of the Trial Examiner to make the following conclusion:

"Under the particular circumstances of the instant case, it is my opinion that the cases do not support the position of the Union and of the General Counsel. All the decisions heretofore rendered have involved factual situations substantially different from those here presented."

on the ground that said conclusion is required by the record.

See the Brief filed in support of these exceptions.

Exception No. 11. Respondent excepts to the following conclusion:

"Thus, in my judgment, the precedents require the conclusion that the Respondent's refusal to permit non-employee union organizers to distribute union literature on the Respondent's parking lot constituted, under the circumstances, an unreasonable impediment to self-organization, and an interference, restraint and coercion of employee rights guaranteed in Section 7 of the Act." (I.R. 8, lines 4-9.)

on the ground that said conclusion is erroneous and is not supported by the record.

See the Brief filed in support of these exceptions.

Exception No. 12. Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, in addition to that made by him at I.R. 8, lines 17-27:

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"During the 1952 election campaign, Bob Goff purchased a hectograph at his own expense so that he and Gene Ford could answer some of the Union literature then being issued."

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on the ground that said finding is required by the record. See testimony of Reynolds at Tr. 195, line 25 through Tr. 197, line 25.

Exception No. 13. Respondent excepts to the failure of the Trial Examiner to make the following finding of fact, in addition to that made by him at I.R. 8, lines 29-41:

"It is clear from the text of the Union's circular of February 25, 1953, that the UAW-CIO was libeling Goff and the others who had opposed the Machinists Union in 1952."

on the ground that said finding is required by the record.

See the references in the circular (G. C. Exh. 8; I.R. 8, lines 35-41) to "hirelings" and to a "pay-off" to employees who signed anti-union petitions in 1952.

Exception No. 14. Respondent excepts to the failure of the Trial Examiner to make the following findings of fact:

- (a) "There was no evidence that any of the employees who opposed the Union in 1952 were "hirelings" or were rewarded by a "pay-off";
- (b) "The "Wolf" cartoon circular (Co. Exh. 5) was also intended to imply that individual employees had been "paid off" by the Company. There was no such evidence, although the UAW-CIO solicited employees to file evidence of unfair labor practices with it;
- (c) "The Union's circular about "giving presents" to the boss or "dating the boss" to secure fair treat-

Exceptions of Ranco Inc.

ment was libelous of the Company, its foremen and the employees. There was no evidence to support those statements;

- (d) "The resentment of the employees at the Union's allegations can readily be understood."

on the ground that said findings are required by the record.

The record herein shows affirmatively that no employee had been "paid-off" for his activities in 1952; that no employees had been taken to Columbus to be "trained" to fight the CIO; and that no "dating" of bosses or giving of gifts had occurred in order to secure fair treatment.

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Ocie Harter —Tr. 136, lines 8-25

Tr. 138, lines 9-12

Gene Ford —Tr. 165, lines 1-10

Tr. 165, lines 11-19

Howard Reynolds—Tr. 198, lines 18-20.

Exception No. 15. Respondent excepts to the Trial Examiner's conclusions at I.R. 10, line 36 through I.R. 11, line 6, on the ground that said conclusions are erroneous and not supported by the record herein.

Exception No. 16. In view of the foregoing exceptions and on the basis of the record herein, respondent excepts to the first four paragraphs under the heading "III. The Remedy", on the ground that the record here supports only dismissal of the Complaint.

Exception No. 17. In view of the foregoing exceptions and on the basis of the record herein, respondent excepts to Conclusions of Law, number 2 and 3.

Exception No. 18. In view of the foregoing exceptions and on the basis of the record, the respondent excepts to

Exceptions of Ranco Inc.

each and every sub-paragraph of the "Recommendations" at I.R. 12, lines 8-42.

Exception No. 19. Respondent excepts to the failure of the Trial Examiner to recommend dismissal of the Complaint on the basis of the record herein.

Wherefore, Respondent moves for dismissal of the Complaint in its entirety.

Respectfully submitted,

Stanley, Smoyer & Schwartz,
Attorneys for Respondent.

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DECISION AND ORDER

Case No. 8-CA-847

On March 8, 1954, Trial Examiner Charles W. Schneider issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs; the Respondent also filed a supplemental brief and requested oral argument. The request for oral argument is hereby denied as the record and the exceptions and briefs, in our opinion, adequately present the issues and the contentions of the parties.

The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed.

Decision and Order

The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent that they are consistent herewith.

1. A majority of the Board finds, in agreement with the Trial Examiner, that the Respondent, by refusing to permit nonemployee union organizers to distribute literature on its parking lot, violated Section 8 (a) (1) of the Act.¹

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2. The Board unanimously agrees, contrary to the holding of the Trial Examiner, that the Respondent did not, under the circumstances of this case, unlawfully assist the activities of certain of its employees who were opposed to the Union. As found by the Trial Examiner, certain of the Respondent's employees, who did not constitute a labor organization within the meaning of the Act, requested the Respondent to reproduce literature, which they had prepared, urging the Respondent's employees to reject the Union. The Respondent agreed to, and did, reproduce such literature, at a cost to it of approximately \$186. Except for the letters which the Respondent mailed directly to its employees, all of such literature was returned to and distributed by the group which had prepared it. The Respondent, moreover, posted a notice advising its employees that it was reproducing such literature at its own expense; the employees were therefore fully informed as to the sources of such literature, and were thus in a position properly to evaluate its contents.

¹Chairman Farmer and Member Peterson agree with the Trial Examiner's conclusion, but for the reasons set forth in their separate concurring opinion. Member Beeson would find, for the reasons set forth in his separate dissenting opinion, that the Respondent's conduct was lawful under the circumstances of this case.

Decision and Order

In view of these circumstances, and particularly in the absence of any deception, we are of the opinion that the part played by the Respondent in the dissemination of the noncoercive views of such employees was too insubstantial to warrant a finding that the Respondent thereby interfered with the rights of its employees, as guaranteed by Section 7 of the Act.² We shall therefore dismiss the complaint, insofar as it alleges that the Respondent, by virtue of such conduct, violated Section 8 (a) (1) of the Act.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Ranco, Inc., Delaware, Ohio, its officers, agents, successors, and assigns, shall:

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1. Cease and desist from prohibiting the distribution of union literature by union representatives on its parking lot except pursuant to reasonable regulations or controls not of such character as to deny them access to employees for the purpose of effecting such distribution.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind its plant rule respecting distribution of literature on its premises, insofar as the rule prohibits the distribution of union literature by union representatives on the Respondent's parking lot at the Delaware plant; except pursuant to reasonable regulations or controls not of such

²This case is, in our opinion, distinguishable on its facts from *The Cleveland Trust Company*, 102 NLRB 1497, 1499-1501, and *The Timken-Detroit Axle Company*, 98 NLRB 790, relied on by the Trial Examiner. Accordingly, we do not reach the question whether the Respondent's conduct comes within the purview of Section 8 (c) of the Act. Cf. *N. L. R. B. v. The Cleveland Trust Company*, — F. 2d —, 34 LRRM 2224, 2228 (C. A. 6).

Decision and Order

character as to deny them access to the employees for the purpose of effecting such distribution;

(b) Post at its Delaware, Ohio, plant copies of the notice attached hereto, marked Appendix A.³ Copies of said notice, to be furnished by the Regional Director for the Eighth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Eighth Region, in writing, within ten (10) days from the date of this Order what steps the Respondent has taken to comply herewith.

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It Is Hereby Further Ordered that except as otherwise found herein the complaint be, and it hereby is, dismissed.

Dated, Washington, D. C., August 25, 1954.

Guy Farmer,	Chairman
Abe Murdock,	Member
Ivar H. Peterson,	Member
Philip Ray Rodgers,	Member
Albert C. Beeson,	Member
National Labor Relations Board.	

(Seal)

³In the event that this order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS; ENFORCING AN ORDER."

Decision and Order

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Guy Farmer, Chairman and Ivar H. Peterson, Member, concurring:

While we agree with the result in this case, we feel that some additional comment is necessary.

The single issue in this case is strictly limited to the extent of an employer's right to deny to nonemployee union representatives the privilege of distributing union campaign literature on the company's parking lot. As we view it, the rule in such situations is that an employer may not enforce such a rule if in fact it is impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.

We agree with the majority on the record before us that the General Counsel has, by affirmative evidence, proved such inaccessibility at this plant.

We do not, however, adopt the breadth of the rationale set out by the Trial Examiner in his Intermediate Report, wherein he apparently confuses the question of an employer's right to exclude nonemployees from the parking lot and the employer's right to prohibit union solicitation and activity by its employees on company property during non-working hours. There is an implication in the Intermediate Report that, whenever an employer would exclude nonemployees from the parking lot, "the burden is upon the employer to show the existence of circumstances warranting the prohibition." That is not the law as we understand it. An employer must justify, by carrying an affirmative burden resting upon him, a blanket prohibition against union activities or solicitation by his employees on company property. However, when it comes to the exclusion of strangers from the plant premises, the exercise of such

Decision and Order

privilege does not depend upon an employer being able to affirmatively prove that the rule is justified. Rather, as stated above, the affirmative burden rests upon the General Counsel to prove inaccessibility off the premises, and failing this the outside organizers have no right, enforceable by this Board, to come on the employer's premises for organizing purposes. We concur in the majority decision because we

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are satisfied that the General Counsel has sustained his Burden of Proof.

Dated, Washington, D. C., August 25, 1954.

Guy Farmer, Chairman
Ivar H. Peterson, Member
National Labor Relations Board.

Member Beeson, dissenting in part:

I cannot agree with my colleagues that the Respondent violated Section 8 (a) (1) of the Act by refusing, under the circumstances of this case, to permit nonemployees to distribute literature on its parking lot. By affirming the Trial Examiner on this issue, they are in effect converting an exception into the general rule.

It cannot be questioned that as a general rule, an employer may control the use of his property as he wishes. It is only when the manner in which he exercises that right of control substantially impinges on the rights of others—in these particular circumstances on the rights of employees as guaranteed by Section 7 of the Act—that his right of control is subject to limitation. The question in each case is one of fact; and the question in this case is: In the light of all the facts, does the Respondent's prohibition constitute a serious impediment to the right of employees

Decision and Order

to secure the information necessary for the exercise of their rights as guaranteed by the Act?

What, then, are the facts? As found by the Trial Examiner, the nonemployee union organizers were able to distribute literature outside the plant gates on some 25 different occasions. Concededly, the conditions under which they worked were not ideal; concededly, distribution was not always 100-percent effective. Nevertheless, literature was distributed in substantial quantities by the nonemployee organizers. And, in addition, no restrictions were placed on the distribution of literature in the parking lot by employees who did in fact distribute literature there on a number of occasions, including the very literature which the nonemployee organizers sought to distribute.

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I can perceive in these facts no serious impediment to the employees' right to secure information. This being so, this case is clearly distinguishable from the *Le Tourneau* case⁴ and the other cases relied on by the Trial Examiner and my colleagues. In each of those cases which did not involve discriminatory application of the prohibition,⁵ the rule in force and its application effectively closed all avenues by which the employees could receive the necessary information. Thus, in *Le Tourneau*, no distribution of any kind was permitted on company property, and the location of the plant and the other physical characteristics made distribution off the property virtually impossible.

⁴*Le Tourneau Company of Georgia*, 54 NLRB 1253, 1255-1262, enf. 324 U. S. 793.

⁵Such as *United Aircraft Corporation*, 67 NLRB 594, 600-608; *Carolina Mills, Inc.*, 92 NLRB 1141, 1165-1166; *Grand Central Aircraft Co., Inc.*, 103 NLRB 1114, 1118, 1159. Although these cases involved factual situations somewhat similar to *Le Tourneau* and the other distinguishable cases, the added factor of discrimination between union organizers and other outsiders, or between distribution of union and antiunion literature, in any event vitiates their value as precedent in the factual situation involved herein.

Decision and Order

And in the other cases a similar broad no-distribution rule effectively closed one avenue of access to such information, while the other avenues were closed by the physical characteristics of the plant location.⁶ In the instant case, however, at least one effective avenue of access to information has been left open, and the resulting situation is therefore more nearly analogous to the cases in which no-distribution rules have been held to be valid;⁷ than to the cases in which they have been held to be unlawful. In view of this situation, the facts that the plant may be located in an isolated area, or that substantial numbers of the employees may live at points distant from the plant, lose their significance. But by giving controlling weight to these physical characteristics, and to the physical characteristics of distribution off the Respondent's property,

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while failing to give proper consideration to other relevant factors, including the facts showing the extent of actual distribution, my colleagues have in substance established a general rule for parking lot distribution. Such a rule goes beyond the necessities of the situation, and is therefore unwarranted.

As I agree with the Board's disposition of the other issue in this case, I would dismiss the complaint in its entirety.

Dated, Washington, D. C., Aug. 25, 1954.

Albert C. Beeson, Member
National Labor Relations Board

⁶Caldwell Furniture Company, 97 NLRB 1501, enf. 199 F. 2d 267 (C. A. 4); The Monarch Machine Tool Co., 102 NLRB 1242, enf. 210 F. 2d 183 (C. A. 6); Remington Rand, Inc., 103 NLRB 152, 163-169; Monsanto Chemical Company, 108 NLRB No. 151.

⁷Newport News Children's Dress Co., Inc., 91 NLRB 1521; Mooresville Mills, 99 NLRB 572, 583-584.

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APPENDIX A
NOTICE TO ALL EMPLOYEES AT THE DELAWARE
PLANT
PURSUANT TO
A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT prohibit the distribution of union literature by union representatives on our parking lot, except pursuant to reasonable regulations or controls not of such character as to deny them access to employees for the purpose of distribution.

Ranco, Inc.
(Employer)

Dated..... By.....
(Representative) (Title)

This notice must remain posted for sixty (60) days from the date hereof, and must not be altered, defaced, or covered by any other material.

**PETITION FOR ENFORCEMENT OF AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

To the Honorable, the Judges of the United States
Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 141, et seq.), hereinafter called the Act, respectfully petitions this Court for the enforcement of its order against Respondent, Ranco, Inc., Delaware, Ohio, its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "Ranco, Inc., and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, UAW-CIO," Case No. 8-CA-847.

In support of this petition the Board respectfully shows:

(1) Respondent is an Ohio corporation engaged in business in the State of Ohio, within this judicial circuit where the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by virtue of Section 10(e) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on August 25, 1954, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Respondent, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon Respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Respondent's Counsel.

(3) Pursuant to Section 10 (e) of the National Labor Relations Act, as amended, the Board is certifying and filing with this Court a transcript of the entire record of the proceeding before the Board upon which the said Order

Petition for Enforcement, Etc.

was entered, which transcript includes the pleadings, testimony and evidence, findings of fact, conclusions of law, and the Order of the Board sought to be enforced.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon Respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a decree enforcing those sections of the Board's said Order which relate specifically to the Respondent herein, and requiring Respondent, its officers, agents, successors, and assigns, to comply therewith.

National Labor Relations Board

By (s) David P. Findling

Associate General Counsel

Dated at Washington, D. C.
this 22d day of Oct., 1954

ANSWER OF RESPONDENT

1. Ranco Inc., the Respondent herein, for its Answer to the Board's Petition filed herein, admits the allegations contained in paragraphs numbered (1), (2) and (3) of said Petition.

2. Respondent says that it has not complied with the Board's order and further says that the prayer of the petition should be denied and that the said order should be rescinded, reversed, set aside and held for naught for the reason that the Board's Findings of Fact and Conclusions of Law, Decision and Order, are arbitrary and capricious, are not supported by the evidence, and are contrary to law.

3. Respondent says that on the record herein, the Board erred as a matter of law in adopting the findings, conclusions and recommendation of the Trial Examiner on the subject-matter of the Board's Order, and in overruling Respondent's Exceptions duly filed thereto.

4. Respondent says that the Board erred as a matter of law in finding that Respondent's action in refusing access to its parking lot to all non-employees indiscriminately constituted a violation of the National Labor Relations Act, as amended, under the circumstances shown in this record, to-wit, that such distribution of literature and other Union activities on Respondent's premises and parking lot were permitted to employees, and that such employees freely engaged in such distribution and activities.

5. Respondent says that on the record herein, the Board erred in finding that enforcement of Respondent's non-discriminatory rule against distribution of literature by non-employees made it "impossible or unreasonably difficult" for the Union to distribute literature; and that it therefore constituted an "unreasonable impediment to self-

Answer of Respondent

organization" and constituted a violation of Section 8(a) (1) of the Act.

WHEREFORE, Respondent prays that the petition of the Board for enforcement of its Order be denied and dismissed and that the Order be reversed set aside and held for naught.

Ranco, Inc.

By Stanley, Smoyer & Schwartz

Stanley, Smoyer & Schwartz

(Eugene B. Schwartz)

970 Union Commerce Building

Cleveland 14, Ohio

Prospect 1-4180

Attorneys for Respondent

State of Ohio }
Franklin County } ss

W. R. Opp. being first duly sworn, deposes and says that he is the Vice-President of Ranco, Inc., the Respondent in this matter; that Ranco Inc., is a corporation; that he is duly authorized to make this verification in behalf of said corporation; that he has read the foregoing answer of the corporation; and that the allegations and averments therein contained are true to the best of his knowledge and belief.

W. R. Opp

Sworn to and subscribed before me this 17th day of December, 1954.

Harry R. Hiss,
Notary Public

(Seal)

My commission expires May 14, 1956.

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—April 22,
1955 (OMITTED IN PRINTING)

IN UNITED STATES COURT OF APPEALS

JUDGMENT—Filed April 27, 1955

This cause came on to be heard on the petition of the National Labor Relations Board for enforcement of its order directing the respondent company to cease and desist from prohibiting the distribution of union literature by union representatives on the company's parking lot, except pursuant to reasonable regulations or control of such character as not to deny them access to the company's employees for the purpose of distributing such literature; and directing the respondent to rescind its plant rule concerning such distribution on its parking lot at its plant in Delaware, Ohio, except pursuant to reasonable regulations of such character as not to deny union representatives access to its employees for the purpose of distributing its literature;

And it appearing, upon a review of the record as a whole, that there is substantial evidence to support the findings of fact of the board;

And it appearing further that, in our judgment, the board properly applied the principles of decisions in the following cases, *N.L.R.B. v. Monarch Machine Tool Company*, 210 F. (2d) 183, 184-187 (C.A. 6); certiorari denied 347 U.S. 967; *N.L.R.B. v. Lake Superior Lumber Co.*, 167 F. (2d) 147, 150 (C.A. 6); *N.L.R.B. v. LeTourneau Company of Georgia*, 324 U.S. 793, 797, 798;

The petition of the labor board for enforcement of its order is granted as prayed by it.

Petition for rehearing covering 18 pages filed June 14, 1955, omitted from this print.

It was denied, and nothing more by order June 30, 1955.

IN UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING—Filed June 30, 1955

The petition for rehearing is denied:

Clerk's Certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1955

No. 422

RANCO, INCORPORATED, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD

ORDER ALLOWING CERTIORARI—Filed November 14, 1955

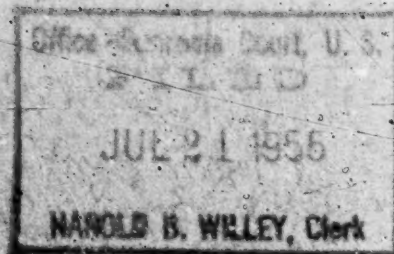
The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar and assigned for argument immediately following No. 250 and No. 251.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5537-6)

LIBRARY
SUPREME COURT, U.S.

No. 250



In the Supreme Court of the United States

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SIMON E. SOBELOFF,

Solicitor General,

Department of Justice, Washington 25, D. C.

THEOPHIL C. KAMMHOLZ,

General Counsel,

DAVID P. FINDLING,

Associate General Counsel,

DOMINICK L. MANOLI,

Assistant General Counsel,

RUTH V. REEL,

Attorney,

National Labor Relations Board, Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. _____

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit entered on May 10, 1955, denying enforcement of an order issued by the Board against the Babcock and Wilcox Company (R. 53-57).¹

OPINIONS BELOW

The opinion of the court below (App. A, *infra*, 15-22) is reported at 222 F. 2d 316. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 50-82) are reported at 109 NLRB 485.

¹ "R" refers to the transcript of record and "B. A." to the appendix to the Board's brief in the court of appeals.

JURISDICTION

The judgment of the court below was entered on May 10, 1955 (App. A, *infra*, p. 22). The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.²

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are set forth in Appendix B, *infra*, p. 24.

² In its brief to the court of appeals, respondent also argued that the court should refuse enforcement because the Board's order was too broad in its scope. While the court below found it unnecessary to deal with the point, it announced that it agreed with respondent's contentions (App. A, p. 17). Since respondent will be free to renew this argument to sustain the judgment below, and since a remand in the face of the expressed view of the court would not result in the enforcement of the order, we shall argue, in the event that certiorari is granted, that the order is valid as entered by the Board.

STATEMENT

I

The facts

Upon the usual proceedings under Section 10 of the Act, the Board, on July 28, 1954, issued its findings of fact, conclusions of law, and order (R. 50-82). The facts may be summarized as follows:

Respondent's plant for the manufacture of boilers and auxiliary products is located on a 100-acre tract approximately one mile from Paris, Texas, a community of 21,000 people (R. 59-60, 66, 67; B. A. 12, 14, 81, 124). About 40 percent of its 500 employees live in Paris and the remaining 60 percent within a radius of 30 miles of the plant (R. 67-68; B. A. 10-12, 121-123, 125-126). Apart from taxi service, there is no public transportation to the plant (R. 67; B. A. 12-13, 123-124). Accordingly, more than 90 percent of the employees drive to work in private automobiles and park on company property adjacent to, but outside of, the fenced-in plant area (R. 67; B. A. 35, 81, 92, 125-126, 134). In order to enter the working area from the parking lot, employees must pass a guarded gatehouse and punch a time clock (R. 67; B. A. 134, 81-82, 34). Running from the parking lot to the state highway is a driveway, 30 feet wide and 100 yards long, which is on company property except where it crosses a public right-of-way extending 31 feet from the highway (R.

4
67; B. A. 134, 29-37, 66). There is no traffic light at the intersection of the driveway and the highway, and no regular police direction (R. 68). Posted along the highway as it passes respondent's premises are state highway signs reading "no parking" and "speed limit 60 miles per hour" (R. 68; B. A. 134).

While the employees were leaving work on three occasions during the summer of 1953, representatives of the United Steelworkers of America, CIO (herein called the Union), which was seeking to organize the plant, distributed union literature on the driveway near the highway intersection (R. 69-71; B. A. 85-86). Such distribution created a traffic jam at the intersection, causing cars to crowd bumper to bumper for some distance up the driveway, and the drivers to sound their horns and attempt to enter the highway three cars abreast. Upon noting this condition on one occasion, respondent's personnel director and its gateman proceeded to the front of the line, motioned the front cars to move along and shouted to the drivers not to block the driveway. (R. 69-70; B. A. 22-25, 49-56, 67-81, 84-85, 97-106.) Following the distribution on another occasion, local and state highway authorities instructed Union representatives that "distribution of union information in leaflet form at the point where the state highway links with [respondent's] parking lot road is hazardous to traffic, and must be discontinued" (R. 52, n. 3, 70; B. A. 129, 93).

Thereafter, respondent denied the Union's request for permission to distribute leaflets on or near the parking lot on the ground (1) that it had refused to grant similar permission to businessmen and (2) that such distribution would litter the property (R. 70-71; B. A. 26, 28, 17, 86, 93, 129-130). The Board found that respondent's prohibition against distribution on its parking lot was non-discriminatorily adopted and applied against employees and all outsiders (R. 71, 51-52; B. A. 96-97, 125).

II

The Board's conclusions and order

The Board, adopting the findings of the Trial Examiner (R. 50-53), concluded that the underlying issue in this case was the proper accommodation between the employer's right to control the use of his property and the employees' right to receive information about unionization, essential to the exercise of their statutory right to self-organization (R. 73). Proceeding under the principle established in *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, where this Court held that an employer prohibition against distribution of union literature on a company parking lot by employee union members is invalid if it creates an unreasonable impediment to the employees' freedom of communication, the Board has considered that, absent special circumstances relating to plant produc-

tion or discipline, an employer is required to grant nonemployee organizers access to company parking lots if access to the employees on public property in the immediate vicinity of their place of work is impossible or unreasonably difficult (R. 73-74).

The Board here, adopting the trial examiner's findings, found that it was neither safe nor practicable for union representatives to distribute union literature on the company driveway or at the intersection of the driveway and the public highway (R. 74-76). The Board rejected (R. 76-77) respondent's contention that its parking lot prohibition did not constitute an unreasonable impediment to self-organization because the Union had other means of communicating with the employees—such as through the mails, on the streets of Paris, at their homes, and over the telephone. Viewing the place of work and the area adjacent thereto as the most practical and effective place for the communication of information and opinion concerning unionization, the Board concluded that it was “no answer to suggest that other means of disseminating Union literature are not foreclosed.” The Board further found that respondent had failed to show any special circumstances to make its prohibition against distribution on the parking lot necessary in order to maintain plant production or discipline (R. 77). Accordingly, it concluded that respondent's denial of access to the parking lot was an unreasonable

impediment to the employees' right to self-organization, and hence a violation of Section 8 (a) (1) of the Act (R. 77).

The Board ordered (R. 53-57) respondent to cease and desist from prohibiting distribution of union literature by union representatives on its parking lot and along the walkways leading from its gatehouse to the parking lot and driveway, to rescind its no-distribution rule to this extent, and to post appropriate notices. The Board's order (R. 53) provided, however, that respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not so as to deny access to union representatives for the purpose of such distribution.

III

The decision of the court below

The court below (App. A, pp. 15-22) set aside the order of the Board, distinguishing *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, on the ground that the distributors there, unlike in the instant case, were employee members of the union. The court stated that Section 7 of the Act gives nonemployees the right to enter upon an employer's premises for the purpose of engaging in union activity in two general situations: (1) where there is antiunion discrimination, as in *National Labor Relations Board v. Stowe Spinning Company*, 336 U. S. 226;

and (2) where union organization must proceed upon the employer's premises or be seriously handicapped because the employees live on company property, as in *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. A. 6). Noting that the instant case presented neither of these situations, the court denied enforcement of the order.

REASONS FOR GRANTING THE WRIT

- 1. The decision of the court below conflicts with the decision of the Court of Appeals for the Sixth Circuit in *National Labor Relations Board v. Ranco, Inc.*, — F. 2d —, 36 LRRM 2136, enforcing 109 NLRB 998, and with decisions of the Court of Appeals for the Fourth Circuit in *National Labor Relations Board v. Caldwell Furniture Company*, 199 F. 2d 267, certiorari denied, 345 U. S. 907, enforcing 97 NLRB 1501; and *National Labor Relations Board v. Carolina Mills, Inc.*, 190 F. 2d 675, 676, enforcing 92 NLRB 1141-1142, 1165-1166.

The employer in *Ranco* had invoked a non-discriminatory ~~no~~ distribution rule to deny non-employee union organizers access to his plant parking lot for the purpose of distributing union literature (109 NLRB 998, 1004-1005). The employees lived in a neighboring town (pop. 12,200) or within a radius of 25 miles of the plant and there was no evidence that they were inaccessible to the union away from the plant area (109 NLRB at 1003-1004). As in the instant case

(App., p. 18), the record was "devoid of proof that any employees were disciplined or in any manner discriminatorily dealt with by the [employer], or were or desired to be members of the union, or were in any way connected with or interested in the distribution by the union representative of its literature." The Board found that the prohibition against access to the parking lot was an unlawful interference with the employees' rights of self-organization and was violative of Section 8 (a) (1) of the Act because it was unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant (109 NLRB at 1000-1007). The Sixth Circuit, on the authority of *National Labor Relations Board v. LeTourneau Company*, 324 U. S. 793, and other cases, upheld the Board's cease and desist order directed against the employer.

Similarly, in *Caldwell Furniture* and in *Carolina Mills*, the Court of Appeals for the Fourth Circuit enforced Board orders directing employers to grant nonemployee union organizers access to company parking lots for the purpose of distributing union literature. In neither case did the employees live on company property (97 NLRB at 1505; 92 NLRB at 1165). Although the employer in *Carolina Mills* permitted other distribution on his parking lot, the prohibition in *Caldwell Furniture* was nondiscriminatory and the Court there granted enforcement on the authority of *National Labor Relations Board v. LeTourneau Company*, *supra*.

2. The Board believes that the court below erred in holding (App. A, p. 20) that "no rights of employees have been invaded or abridged" by the respondent in denying union representatives access to its parking lot for the purpose of distributing union literature.

In *Thomas v. Collins*, 323 U. S. 516, 533-534, this Court recognized that the statutory guarantee of self-organization by employees for purposes of collective bargaining includes not only the right of employees "fully and freely to discuss and be informed" concerning union matters, but also the "necessarily correlative" right of a "union, its members and officials * * * to discuss with and inform the employees" with respect to such matters. These rights cannot be effectively realized unless there are adequate avenues of communication, not only among the employees but also between them and union representatives from whom the employees may receive advice or information with respect to their exercise of the rights guaranteed by the Act.

In the *LeTourneau* case, this Court held that an employer prohibition against the distribution of union literature by employees on a company parking lot constituted an unreasonable and therefore unlawful impediment to the employees' exercise of their statutory right to self-organization. The decision was based upon the premise that where employees live over a widely scattered area, the plant situs is, from a practical standpoint, the

only place where the employees can effectively communicate with one another for purposes of exercising their right to self-organization; hence, on balance, the employer's proprietary interest may properly be subordinated to the employees' interest in self-organization. Consistent with that premise, the Board considers that a similar ban against the distribution of union literature by nonemployee organizers is also invalid unless the employees are reasonably accessible in public areas in the immediate vicinity of the plant. Absent such access in the adjacent public area, serious practical barriers stand in the way of any attempt by such organizers to communicate with any large number of the employees. Weighing the employees' interest in self-organization against the employer's proprietary interest, the Board has, in such circumstances, struck a balance, in favor of the employees.³

³ The decision of the Seventh Circuit in *Marshall Field and Company v. National Labor Relations Board*, 200 F. 2d 375, does not support the judgment of the court below. That case did not involve the right of union organizers to enter upon a company parking lot, but rather their right to come inside the employer's store for the purpose of engaging in union activity. Admittedly, the considerations which govern the right of access to the plant proper are different from those which control the right to enter upon company property outside the plant. Moreover, in that case the union organizers had opportunities to communicate with the employees at some locations both in, and immediately adjacent to, the store; hence the court concluded that there was no evidentiary basis for the Board's finding that the ban against further access to the employees else-

The court below and the Tenth Circuit, in *National Labor Relations Board v. Seamprufe, Inc.*, — F. 2d —, 36 LRRM 2095, in which the Board is also filing a petition for certiorari, have rejected the accommodation thus made by the Board between these two competing interests. The difference between the Board and the two courts does not turn upon a factual disagreement as to the relative facility of communication between employees and union representatives in and around the plant and elsewhere. Rather, the two courts appear to have adopted the view that, except where employees live and work on company property isolated from outside contacts, the employer's proprietary interest is paramount to the employees' interest in self-organization insofar as access by nonemployee organizers is concerned and that the employer may therefore lawfully bar such organizers from his premises. In reaching this conclusion, the two decisions, we think, run counter to the underlying premise of this Court's decision in *LeTourneau*.

3. The decision below presents an issue of law which is important in the administration of the Act and of practical everyday importance to employers, employees, and labor organizations. The

where in the store seriously handicapped the employees' exercise of their statutory rights. It may also be noted that the Seventh Circuit did sustain that portion of the Board's order precluding the company from barring nonemployee union organizers from the private alleyway separating its store buildings (200 F. 2d at 38).

frequency with which the question has arisen, in the absence of a determination by this Court, is evidenced by the fact that it is now pending before the Court of Appeals for the Ninth Circuit, and has recently been before the Courts of Appeals for the Fourth, Fifth, Sixth and Tenth Circuits.⁴

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for certiorari should be granted.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,

National Labor Relations Board.

JULY 1955.

⁴ *National Labor Relations Board v. Monsanto Chemical Company* (C. A. 9, No. 14472); *National Labor Relations Board v. Caldwell Furniture Company*, 199 F. 2d 267 (C. A. 4), certiorari denied, 345 U. S. 907, enforcing 97 NLRB 1501; *National Labor Relations Board v. The Babcock and Wilcox Company*, 222 F. 2d 316 (C. A. 5); *National Labor Relations Board v. Ranco, Inc.*, — F. 2d — (C. A. 6), 36 LRRM 2136; *National Labor Relations Board v. Seamprufe, Inc.*, — F. 2d — (C. A. 10), 36 LRRM 2095.

APPENDICES

APPENDIX A

In the United States Court of Appeals for the
Fifth Circuit

No. 15311

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY, RESPONDENT

PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD, SITTING AT WASH-
INGTON, D. C.

May 10, 1955

Before HUTCHESON, *Chief Judge*, HOLMES, *Circuit Judge*, and DAWKINS, *District Judge*.

HUTCHESON, *Chief Judge*: Based upon a finding that the respondent had engaged and was engaging in unfair labor practices violative of Section 8 (a) (1) of the Act, by its maintenance and enforcement of a rule prohibiting distribution of literature on its premises to the extent that such rule barred union representatives from making distribution of union literature on its parking lot, walkways, and drive, the board entered the order¹ which is the

¹“Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders

subject of this controversy, and, the respondent declining to obey the order, the Board is here seeking its enforcement on the ground that, within the principle established in *N. L. R. B. v. LeTourneau*, 324 U. S. 793, the order is valid and must be enforced.

Respondent does not contest the principle established in *LeTourneau's* case. Instead, it insists that that case is completely without application here, because involved there was the discharge of

that the Respondent, The Babcock and Wilcox Company, Paris, Texas, its officers, agents, successors, and assigns, shall:

"1. Cease and desist from:

"(a) Prohibiting the distribution of union literature by union representatives on its parking lot and alongside the walkways from the gatehouse to the parking lot and the drive, provided, however, that the respondent may impose reasonable and non-discriminatory regulations in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution.

"(b) Engaging in any like or related acts of conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, etc. * * *

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

"(a) Rescind immediately its rule prohibiting the distribution of union literature by union representatives on its parking lot at its Paris, Texas, plant, and alongside the walkways from the gatehouse to the parking lot and the drive.

"(b) Post the usual notices, etc.

employees, members of the union, for distributing union literature in violation of the company's non-distribution rule, while here no action has been taken against any employee of the company, nor is any employee in anywise involved. Pointing out that the sole question presented for decision here is whether union representatives, not employed by or otherwise connected with the company and not working in concert with or upon the solicitation of any of its employees, can solely in their own interest and for their own benefit compel the employer to discriminatorily enforce in their favor a non-discriminatory rule which the examiner and Board find has been non-discriminatorily enforced, prohibiting the distribution of any kind of literature upon the employer's premises, it urges upon us that nothing in the language or spirit of the statute and nothing in any of the decisions at all supports or warrants the Board's cease and desist order.

Secondarily, respondent insists that, if contrary to its firm view, the non-discriminatory enforcement against union representatives of its non-distribution rule is an unfair labor practice, subdivision (b) of the order is not based on but goes far beyond both the findings and the facts in the case.

Because, for the reasons hereafter briefly stated, we agree with respondent that the enforcement of the order must be denied, although we agree also with its secondary proposition, that the order was too broad, it will not be necessary to discuss or deal with it.

In *Marshal Field and Company v. N. L. R. B.*, 200 F. (2) 375, a case involving activities of both

employee and non-employee union members, the Court of Appeals for the Seventh Circuit, in a thoroughly considered and well reasoned opinion, has recently and we think correctly discussed the principle invoked here and analyzed the authoritative cases dealing with it.

Pointing out that the courts have held that Section 7 of the Act gives a right to a non-employee to enter and solicit union membership on employer's premises under two general situations, the first of which is where there has been discrimination, *N. L. R. B. v. Stowe*, 336 U. S. 226, and *Bonwit-Teller v. N. L. R. B.*, 197 F. (2) 640, and the second is where union organization must proceed upon the employer's premises or be seriously handicapped, *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. (2) 147, the opinion goes on to present a complete and, we think, entirely correct analysis of the opinion of the Supreme Court in the two controlling cases, *Republic Aviation Corp. v. N. L. R. B.*, and *N. L. R. B. v. LeTourneau*, 324 U. S. 793 and of its teachings and effect. This analysis shows: (1) that those cases involved only union organizers who were employees of each company respectively; (2) that in each case employee organizers were discharged for violation of the non-distribution rule; and (3) that the sole question presented here was not in any way presented, dealt with, or discussed there. This question is whether, on a record devoid of proof that any employees were disciplined or in any manner discriminatorily dealt with by the respondent, or were or desired to be members of the union, or were in any way connected with or interested in the distribution by the union representatives of its literature, the board had authority to

require the respondent to institute in favor of non-employee union organizers, complete strangers to it and to its employees, a discriminatory non-enforcement of its non-distribution rule, which the proof showed and examiner and board found had always and uniformly been enforced in a completely non-discriminatory way.

We find ourselves in full agreement with the conclusions announced in the opinion in the *Marshall-Field case, supra*, and with the reasoning upon which those conclusions are based. We find ourselves in full agreement too with the contention of the respondent that the orders of the board in this case are not in accordance with but in direct violation of the letter and spirit of the Labor Management Act, as amended.² Indeed we are at a loss to understand how on this record, which contains neither findings, nor evidence furnishing a basis for findings, that the rights or interests of respondent's employees are involved or will be furthered by compelling the respondent

² "Sec. 141. Short title; Congressional declaration of purpose and policy.

"(a) * * *

"(b) * * * It is the purpose and policy of this chapter, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the right of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management, which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce. * * *

to institute a discriminatory application in favor of a particular labor union of its non-distribution rule, the board can take to itself the power to accord the union rights which the statute does not accord it by imposing against the respondent, in favor of a particular union, a servitude on its property which the law, neither in terms nor in spirit, accords to it, in a case, too, where no employee is involved, no employee is complaining, and no rights of employees have been invaded or abridged by the respondent. We think that the order is itself in violation of the Labor Management Act and of the board's duty to impartially enforce it as between union and management in the interest of neither but only in the interest of the employees.

Said Mr. Justice Reed, the organ of the Supreme Court in the *LeTourneau* case, dissenting in *Stowe's case*, *supra*:

It is only when there is a violation through an interference with or a restraining or coercion of employees' rights under Sec. 7 that an unfair labor practice finding may be predicated on the employer's acts. The employer is not required to aid employees to organize. The law forbids only interference.

Whatever may be said of the correctness of this statement as applied to the facts of that case, which involved anti-union discrimination with respect to a company owned meeting hall in a quasi-company town and the discharge of four employees for union membership, it is certainly a correct statement of the law as applied to the facts of this case, and we think we cannot better

draw a distinction between this case and *Le-Tourneau's* case than it is drawn in the following quotation from that dissent:

It has never been held that where the employees do not live on the premises of their employer a union organizer has to be admitted to those premises. The present situation differs from the employer-controlled areas where employees both live and work in that here union organizers may solicit the employees on the streets or in their homes or at public meeting houses within a few miles of their employment. Employees are not isolated beyond the hours of labor from an organizer nor is an organizer denied access to the employees. After an organizer has convinced an employee of the value of union organization, the employee can discuss union relations with his fellow employees during non-working hours in the mill. This gives opportunity for union membership proliferation. *Republic Aviation Corp. v. N. L. R. B.* and *N. L. R. B. v. LeTourneau Company of Georgia*, 324 U. S. 793.

The present case differs from the *Le-Tourneau* and *Republic* cases in that in those cases the problem concerned the right of an employer to maintain discipline by forbidding employees to foster by personal solicitation union organization on the grounds or in the plant of the company during the employees' non-working time. We held that, unless there were particular circumstances that justified such a regulation to secure discipline and production, the employer must allow such discussion.

[Emphasis supplied.] *N. L. R. B. v. Stowe*, 336 U. S. at 243.

Enforcement of the Board's order is denied.

Judgment

Extract from the Minutes of May 10, 1955

No. 15311

NATIONAL LABOR RELATIONS BOARD,

v.

THE BABCOCK AND WILCOX COMPANY

This cause came on to be heard on the petition of the National Labor Relations Board for the enforcement of an order of the National Labor Relations Board, made on July 28, 1954, in the Matter of "The Babcock and Wilcox Company, and United Steelworkers of America, CIO, Case No. 16-CA-671," and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the petition for enforcement of the order of the National Labor Relations Board in this cause be, and the same is hereby, ordered denied.

Decree filed—July 12, 1955.

In the United States Court of Appeals for the Fifth Circuit

No. 15311

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY, RESPONDENT

Decree

Before HUTCHESON, Chief Judge, HOLMES, Circuit Judge, & DAWKINS, District Judge.

BY THE COURT:

This cause came on to be heard upon the petition of the National Labor Relations Board to enforce its order dated July 28, 1954. The Court heard argument of respective

counsel on March 29, 1955, and has considered the briefs and the transcript of record filed in this cause. On May 10, 1955, the Court, being fully advised in the premises, handed down its decision denying enforcement of the Board's order. In conformity therewith, it is hereby

Ordered, adjudged and decreed that enforcement of the Board's said order directed against Respondent, The Babcock and Wilcox Company, Paris, Texas, its officers, agents, successors, and assigns, be and it hereby is denied...

Entered: July 12, 1955.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

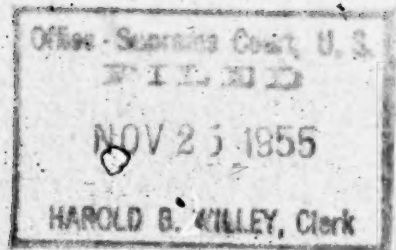
UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

LIBRARY
SUPREME COURT, U.S.



No. 250

In the Supreme Court of the United States

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

SIMON E. SOBELOFF,
Solicitor General,

Department of Justice, Washington 25, D. C.

THEOPHIL C. KAMMHOLOZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 250

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

THE BABCOCK AND WILCOX COMPANY

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE FIFTH CIRCUIT*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 249-253) is reported at 222 F. 2d 316. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 50-82) are reported at 109 N. L. R. B. 485.

JURISDICTION

The judgment of the court below was entered on July 12, 1955 (R. 254). The petition for a writ of certiorari was filed on July 21, 1955, and was granted on October 10, 1955 (R. 254). The jurisdiction of this Court rests on 28 U. S. C.

1254 and Section 10 (e) of the National Labor Relations Act, as amended:

QUESTIONS PRESENTED

1. Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

2. Whether the Board's order is valid and proper in so far as it directs respondent to cease and desist not only from the unfair labor practice found, but also from any "like or related" conduct infringing upon its employees' exercise of rights guaranteed by Section 7 of the Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are set forth in the Appendix, *infra*, pp. 48-50.

STATEMENT

I

The facts

Respondent, which manufactures boilers and auxiliary products, has a plant located on a 100-acre tract approximately one mile from the town

limits, and several miles from the center, of Paris, Texas, a community of 21,000 people (R. 59-60, 66-67; 102, 104, 117, 215). The plant employs about 500 workers on a 3-shift basis. About 40 percent of these employees live in Paris. The remaining 60 percent live in widely scattered small communities or in the countryside within a radius of 30 miles of the plant. (R. 52, n. 3, 67-68; 100-102, 211-213, 215-216). Apart from taxi service, there is no public transportation to the plant (R. 67; 213-214, 102-103). Accordingly, more than 90 percent of the employees drive to work in private automobiles and park in a parking lot which is owned by the company and is adjacent to, but outside of, the fenced-in plant area (R. 67; 125, 171, 182, 224-225). In order to enter this working area from the parking lot, employees must pass a guarded gatehouse and punch a time clock (R. 67; 224, 171-172, 124).

The parking lot is located about 100 yards from the state highway. A driveway, 30 feet wide and 100 yards long, runs from the highway to the parking lot. The driveway is located on company property except where it crosses a public right-of-way which extends 31 feet from the highway (R. 67; 224, 119-127). There is no traffic light at the intersection of the driveway and the highway, and no regular police direction (R. 68). Posted along the highway as it passes respondent's premises are state highway signs reading "no parking"

and "speed limit 60 miles per hour" (R. 68; 224, 173).

On three occasions during the summer of 1953, representatives of the United Steelworkers of America, CIO (herein called the Union), which was seeking to organize the plant, distributed union literature to employees leaving the plant on the driveway near the intersection with the highway (R. 69-71; 175-176). As a consequence a traffic jam resulted at the intersection, causing cars to crowd bumper to bumper for some distance up the driveway and the drivers to sound their horns and attempt to enter the highway three cars abreast. Upon noting this condition on one occasion, respondent's personnel director and its gate-man proceeded to the front of the line, motioned the front cars to move along, and shouted to the drivers not to block the driveway. (R. 63-64, 69-70; 112-115, 139-146, 157-171, 174-175). Following the distribution on another occasion, local and state highway authorities, called by respondent, instructed union representatives that "distribution of union information in leaflet form at the point where the state highway links with [respondent's] parking lot road is hazardous to traffic, and must be discontinued" (R. 52, n. 3, 70; 219, 183, 126).

Thereafter, the Union requested permission to distribute leaflets on or near the parking lot during the employees' free time. Respondent re-

jected the request, giving as reasons for its action that it had refused to grant similar permission to businessmen and that such distribution would litter the property (R. 70-71; 116, 118, 107, 176, 183, 219-220). At the beginning of plant operations at Paris, respondent had promulgated, and thereafter enforced, a rule prohibiting distribution of literature on its parking lot either by employees or by any outsiders (R. 68-69, 71, 51-52; 203, 186-187, 215, 221-223).

Concurrently with its efforts to distribute literature in the immediate vicinity of the plant, the Union also sought to communicate with respondent's 500 employees away from the plant area. On three occasions during the summer of 1953 the Union mailed literature to approximately 100 employees, and in addition talked with some of the employees on the streets of Paris, at their homes and over the telephone. Some of the visits to the employees' homes entailed travel to communities 11, 21, 26, and 30 miles from Paris. About 60 percent of the employees have telephones, of which about 90 percent are on the Paris telephone exchange. (R. 68, 71-72; 182, 99-102, 132-136, 211-212).

II

The Board's conclusions and order

The Board, adopting the findings of the Trial Examiner (R. 50-53), concluded that the underlying issue in this case was the proper accommo-

dation between the employer's right to control the use of his property and the employees' right to receive information about unionization, essential to the exercise of their statutory right to self-organization (R. 73). Proceeding under the principles established in *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, where this Court held that an employer prohibition against distribution of union literature by employees on a company parking lot is invalid if it creates an unreasonable impediment to the employees' freedom of communication, the Board concluded that, in the absence of special circumstances relating to plant production or discipline, an employer is required to grant non-employee organizers access to company parking lots if access to the employees on public property in the immediate vicinity of their place of work is impossible or unreasonably difficult (R. 73-74).

The Board, adopting the Trial Examiner's findings, found that it was neither safe nor practicable for union representatives to distribute union literature on the company driveway or at the intersection of the driveway and the public highway (R. 74-76). It rejected (R. 76-77) respondent's contention that its parking lot prohibition did not constitute an unreasonable impediment to self-organization because the Union had other means of communicating with the employees—such as through the mails, on the streets of Paris, at their homes, and over the telephone.

Viewing the place of work and the area adjacent thereto as the most practical and effective place for the communication of information and opinion concerning unionization, the Board concluded that it was "no answer to suggest that other means of disseminating Union literature are not foreclosed" (R. 76). The Board further found that respondent had failed to show any special circumstances establishing that the prohibition against distribution on the parking lot was necessary in order to maintain plant production or discipline (R. 77). Accordingly, it concluded that respondent's refusal to permit the Union's representatives to distribute literature on the parking lot was an unreasonable impediment to the employees' right to self-organization, and hence a violation of Section 8 (a) (1) of the Act (R. 77).

The Board ordered respondent to cease and desists from prohibiting distribution of union literature by union representatives on its parking lot and along the walkways leading from its gatehouse to the parking lot and driveway, and from any like or related conduct interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act (R. 53-57). Affirmatively, the Board ordered respondent to rescind its no-distribution rule to the above extent and to post appropriate notices. The Board's order (R. 53) also provides, however, that respondent may impose reasonable and nondiscriminatory regulations in the interest

of plant efficiency and discipline, but not so as to deny access to union representatives who desire to distribute union literature to the employees.

III

The decision of the court below

The court below (R. 249-253) set aside the order of the Board, distinguishing *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, on the ground that the distributors there, unlike those in the instant case, were employee members of the union who had been disciplined by their employer for violation of a no-distribution rule. The court stated that Section 7 of the Act gives nonemployees the right to enter upon an employer's premises for the purpose of engaging in union activity in two general situations: (1) where there is anti-union discrimination, as in *National Labor Relations Board v. Stowe Spinning Company*, 336 U. S. 226, and (2) where union organization must proceed upon the employer's premises or be seriously handicapped because the employees live on company property, as in *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. A. 6). Noting that the instant case presented neither of these situations, the court held that here "no rights of employees have been invaded or abridged" by respondent (R. 252). The court further stated (R. 250) that while, in view of its disposition of the case, it was unrec-

sary to discuss or deal with the point, it nevertheless agreed with respondent that the Board's order was, in any event, too broad in scope in so far as it directed respondent to cease and desist from "any like or related" infringement upon its employees' rights under Section 7 of the Act.¹

SUMMARY OF ARGUMENT

I

In *National Labor Relations Board v. LeTourneau Co.*, 324 U. S. 793, this Court held that an employer's prohibition against the distribution of union literature by employees on a company parking lot unlawfully interfered with the rights of self-organization guaranteed employees by Section 7 of the Act because it constituted an unreasonable impediment to the employees' exercise of those rights. The principles upon which that decision rests sustain the Board's ruling here that a similar prohibition against nonemployee union

¹ Section 1 (b) of the Board's order (R. 53-54) directs respondent to cease and desist from:

"Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8 (a) (3) of the Act."

organizers is an unreasonable and unlawful impediment to the employees' exercise of Section 7 rights.

As this Court recognized in *LeTourneau*, in order that employees may effectively exercise the rights they are guaranteed under the Act, there must be available to them adequate channels of communication for the receipt and transmittal of organizational information, both oral and written. On the other hand, due recognition must be given to the employer's property and legitimate business interests. "Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." 324 U. S. at 798. Therefore, where an employer seeks to justify a rule prohibiting organizational activities on his premises, the critical issue before the Board is whether, on balance, the injury to the employees' organizational interests outweighs the injury which the employer would sustain if the rule were abrogated.

Proceeding under the principles approved in *LeTourneau*, the Board in the instant case assessed the impact which the prohibition against the distribution of union literature by nonemployee organizers on the plant parking lot has upon the employees' exercise of their statutory

rights. It recognized that adequate opportunity for employees to receive information from outside organizers is an indispensable attribute of the right to self-organization and that this right can not, as a practical matter, be effectively realized unless the union has access to the employees in the area in the immediate vicinity of the plant. The Board found that there is little, if any, prejudice to the employer's legitimate business interests in permitting distribution of union literature on the parking lot by nonemployee organizers. Weighing these competing interests, the Board struck a balance in favor of the employees' interest in the effective exercise of their statutory rights. The accommodation thus made by the Board is, as in *LeTorneau*, an appropriate "adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." 324 U. S. at 797-798.

The circumstance that the employer's prohibition is directed against nonemployee organizers rather than against employees affords no basis for the view of the court below that the prohibition does not invade or abridge any right of the employees. The statutory guarantee of self-organization for purposes of collective bargaining includes not only the right of employees to discuss and be informed concerning organiza-

tional matters, but also the necessarily correlative right of a union and its representatives to discuss with employees the advantages of self-organization. Employee rights are no less involved merely because organizational information is disseminated by the union on its own initiative rather than by the employees. In either case the distributors are pursuing the same end, namely, to advise the workers at the plant of their rights under the Act and the purported advantages of unionization. And to the extent that otherwise appropriate channels of communication between employees and union organizers are blocked, the employees' statutory rights are impaired.

An employer may not restrict access to his employees on a plant parking lot solely on the ground that his property rights entitle him to exclude "trespassers." As this Court has recognized, the rights granted to employees under the Act may on a proper showing supersede the employer's dominion over the property on which such activities occur.

The view of the court below—that, unless employees work and live on company property, lack of access to them at or near the plant does not substantially impede the exercise of their statutory rights—not only misconceives this Court's decision in *LeTourneau*, but also fails to take into account the serious and sometimes almost insurmountable practical difficulties which lack of access to the employees at or near the plant imposes

upon the employees' effective exercise of their statutory rights. In *LeTourneau*, access to the employees at places other than the vicinity of the plant was not foreclosed; nevertheless, this Court concluded that the ban against distribution on the parking lot seriously impeded the employees' exercise of the rights guaranteed by the Act. In so concluding, the Court implicitly recognized that the place of work is from a practical standpoint the most effective place for the communication of information concerning unionization and that it was no answer to say that access to the employees elsewhere was possible.

II

The Board's order is valid and proper. The order requires respondent to cease and desist from enforcing its no-distribution rule and from engaging in "any like or related acts" which encroach upon the employees' exercise of the rights guaranteed by the Act. In enjoining the commission of "like or related" unfair labor practices, the order fully comports with controlling decisions of this Court. "Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts." *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 436.

ARGUMENT

I

The Board properly found that respondent violated Section 8 (a) (1) of the Act by prohibiting union organizers from distributing union literature on its plant parking lot during the employees' free time.

In *National Labor Relations Board v. LeTourneau Company*, 324 U. S. 793, this Court held that an employer prohibition against the distribution of union literature by employees on a company parking lot unlawfully interfered with the rights guaranteed employees by Section 7 of the Act because it constituted an unreasonable impediment to the employees' exercise of those rights. The only significant factual difference between the two cases, which the court below deemed decisive, is that here the employer's rule against such distribution was enforced against nonemployee union organizers. Nevertheless, we believe that the principles upon which the *LeTourneau* decision rests also sustain the Board's ruling here that respondent violated Section 8 (a) (1) of the Act in barring these union organizers from distributing union literature on its parking lot.

1. In *LeTourneau* (see 324 U. S. at 797), as here, the employer's plant was located in a rural area. The employees' dwellings were widely scattered within a radius of 20 miles from the plant. Contact on public ways or on noncompany property with employees at or near the plant was limited to those employees, approximately one-

third of the working force, who were likely to walk across the public highway near the plant on their way to work or who would stop their private automobiles, busses or other conveyances on the public roads for communications.

The employer in that case adopted and enforced a rule prohibiting his employees from distributing union literature during their free time on a company-owned parking lot adjacent to his fenced-in plant. Although neither union bias nor a discriminatory purpose prompted the adoption or enforcement of the rule, the Board concluded that the prohibition constituted an unreasonable and therefore illegal impediment to the employees' exercise of the rights guaranteed by Section 7 of the Act. This Court upheld the Board's invalidation of the employer's rule as an appropriate "adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." 324 U. S. at 797-798.

The underlying considerations which prompted the Board and this Court to reach that conclusion are relevant and controlling here. Insuring the right of employees to organize for mutual aid is, as this Court pointed out, a "dominant purpose" of the Act. In order that employees may effectively exercise the rights guaranteed them under the Act, there must be available to the employees adequate channels of communication for the re-

ceipt and transmittal of organizational information, both oral and written. On the other hand, due recognition must be given to the employer's property and legitimate business interests. "Like so many others, these rights are not unlimited in the sense that they can be exercised without regard to any duty which the existence of rights in others may place upon employer or employee. Opportunity to organize and proper discipline are both essential elements in a balanced society." 324 U. S. at 798. Therefore, where an employer seeks to justify a rule prohibiting organizational activities on his premises, the critical issue before the Board is whether, on balance, the injury to the organizational interests of the employees which the rule imposes outweighs the injury which the employer would sustain if the rule were abrogated.

Weighing these factors, the Board found in *LeTourneau*, with the subsequent approval of this Court, that the prohibition against distribution of union literature on the company parking lot deprived the employees of an important avenue of communication, and therefore seriously impeded the exercise of their right to self-organization for purposes of collective bargaining. This finding was premised on the Board's view that, where employees' homes are widely scattered and direct contact with the employees away from the plant is extremely difficult, the area immediately adjacent to the plant is, from a practical stand-

point, the most effective place for the distribution of union literature. And as this Court held, it is no answer to suggest that union literature may be distributed elsewhere or that the plant is unlike a mining or lumber camp where the employees live and work on the employer's premises so that union organization must proceed upon the employer's premises or be seriously handicapped. See 324 U. S. at 798-799.

Against the detriment to employee interests which the parking lot prohibition imposed, the Board weighed the employer's need for such a restriction to maintain production or discipline or to protect other legitimate interests. The Board had already concluded that an employer was justified in prohibiting organizational activities during working hours,² and, further, that his interest in keeping a clean and orderly plant warranted a prohibition against distribution of union literature inside the plant even during non-working hours.³ Noting, however, that "considerations of efficiency and order which may be deemed of first importance within buildings where production is being carried on, do not have the same force in the case of parking lots" (54 N. L. R. B. at 1261), the Board found that permitting distribution of union literature on the

² *Peyton Packing Company*, 49 N. L. R. B. 828, 843, quoted with approval in the Court's decision in the *LeTavernier* case, 324 U. S. at 803, n.10.

³ *Tabin-Picker & Co.*, 50 N. L. R. B. 928, 930.

parking lot during nonworking hours would impose little, if any, detriment upon the legitimate interests of the employer and that the employer remained free to protect those interests by methods which did not adversely affect the rights of employees.

Thus, the employer's assertion that the rule was necessary to prevent littering of the parking lot did not justify a prohibition against distribution, because the littering could be avoided by a rule against littering. His claim that the prohibition was necessary to prevent literature from going into the plant where it might provoke controversy which might impair efficiency and safety was deemed to be equally insubstantial, since his interest in these respects could as well be safeguarded by a rule barring the carrying of literature into the plant as by a rule directed against distribution on the parking lot. Accordingly, the Board found that, on balance, the employer's business interests were insufficient to justify the impediment which the parking lot prohibition imposed upon the effective exercise of the employees' organizational rights, and that therefore the employer's proprietary interest could properly be subordinated to the employees' interest in self-organization (54 N. L. R. B. at 1261-1262). And this Court approved the accommodation the Board had made between the competing interests.

Upon substantially identical reasoning, the Board has concluded in the instant and other

cases that a similar ban against distribution of literature by union organizers on a company parking lot likewise constitutes an unlawful interference with the employees' organizational rights if it unreasonably restricts opportunity for their exercise. Proceeding under the principles which this Court approved in the *LeTourneau* case, the Board has assessed the impact of such a restriction upon the organizational interests of the employees. It has recognized that, as this Court noted in *Thomas v. Collins*, 323 U. S. 516, 533-534, adequate opportunity for employees to receive information not only from fellow employees but also from union organizers is an indispensable attribute of the right to self-organization. *Seamprufe, Inc.*, 109 N. L. R. B. 24, 31-32. It has found that this right cannot, as a practical matter, be effectively realized unless the union has access to the employees in the area in the immediate vicinity of the plant. For union distributors face the same practical hardships which confront employee distributors in attempting to distribute literature to employees' homes scattered throughout a large city or over a wide rural area. *Seamprufe, Inc.*, 109 N. L. R. B. at 32; *Monsanto Chemical Co.*; 108 N. L. R. B. 1110, 1122.

Where the bulk of employees walk out of the plant gates onto a public street or highway so that literature can easily be distributed to them

on noncompany property in the immediate vicinity of the plant, the Board has concluded that an employer does not unduly restrict the opportunity for dissemination of organizational information by denying the union access to the employees on company property. *Newport News Children's Dress Co., Inc.*, 91 N. L. R. B. 1521, 1522; *Mooreville Mills*, 99 N. L. R. B. 572, 584.* Where, however, it is impossible or unreasonably difficult for a union to distribute literature to the employees on noncompany property immediately adjacent to the plant premises, as is the case here, effective distribution depends upon utilization of the employer's property. Under such circumstances, the Board is called upon to decide

* In *Newport News*, the employer's property measured only about 50-x 120 feet. The approximately 60 employees entered and left the premises through a single gate opening on a public street and most of them boarded buses across the street from the plant. Under these circumstances, the Board concluded that literature could easily be distributed to the employees as they walked out the gate and that the union organizer therefore was not entitled to enter upon the employer's property (91 N. L. R. B. at 1522). The facts in *Mooreville Mills* were similar (99 N. L. R. B. at 584). The issue there was whether the employer could properly prohibit union organizers from distributing literature on that part of its property extending from its gateway to the public sidewalk. The employees left the plant on foot or in cars through a single gate and many of them boarded public buses across the street from the employer's premises. The Board concluded that literature could easily be distributed to the employees as they entered and left the gate and that the employer could properly deny access to his property under the circumstances.

whether permitting such activity on company property, particularly in a nonworking area devoted exclusively to the parking of automobiles, would impose upon the employer a detriment so prejudicial to his legitimate business interests as to justify prohibition of the distribution even though it may seriously impair the employees' exercise of their rights under the Act. And it has concluded that unless undue interference with plant production or discipline would result, access to the parking lot is warranted. *Ranco Inc.*, 109 N. L. R. B. 998, 999-1009, enforced, 222 F. 2d 543 (C. A. 6), certiorari granted, No. 422, this Term; *Seamprufe, Inc.*, 109 N. L. R. B. 24, 28-33, enforcement denied, 222 F. 2d 858 (C. A. 10), certiorari granted, No. 251, this Term; *Monsanto Chemical Co.*, 108 N. L. R. B. 1110, enforcement denied, 225 F. 2d 16 (C. A. 9), pending on petition for certiorari, No. 492, this Term; *Caldwell Furniture Co.*, 97 N. L. R. B. 1501, enforced, 199 F. 2d 267 (C. A. 4), certiorari denied, 345 U. S. 907; *Carolina Mills, Inc.*, 92 N. L. R. B. 1141-1142, 1165-1166, enforced, 190 F. 2d 675, 676 (C. A. 4).

Under the principles enforced in *Le Tourneau*, the balance between the competing interests was fairly struck by the Board in the foregoing cases and in this case. The undisputed facts here show (*supra*, pp. 2-3) that practically all of respondent's 500 employees live beyond walking distance from the plant. Cf. *Le Tourneau*, 324 U. S. at

797. Forty percent of them live in Paris, Texas, which is ~~one~~ mile distant from the plant, and the remaining sixty percent live in widely scattered places within a radius of thirty miles from the plant. There is no public transportation to the plant other than taxicabs. More than ninety percent of the employees arrive by private car, drive directly onto company property, and park some distance from the public highway. Union efforts to distribute literature at the intersection of the highway and the driveway to the parking lot resulted in traffic jams and an ultimatum from highway authorities that such distribution was "hazardous to traffic, and must be discontinued" (R. 52, n. 2, 69-70; 219, 183, 112-115, 139-146, 157-171, 174-175, 187-199). In these circumstances, the Board found (R. 75-76), it was neither safe nor practical for the Union to distribute literature on noncompany property either in the immediate vicinity of the plant or at the homes of the employees. Accordingly, it concluded that respondent's prohibition of access to its parking lot blocked an important avenue of communication, seriously impeding the employees' exercise of their rights under the Act.

Weighing the prohibition's effect upon the employees' organizational rights against the possible detriment to employer interests, the Board found (R. 77) little, if any, prejudice to the employer in permitting distribution on the parking lot. Indeed, before the Board, respondent, in support

of its position, stood solely upon its naked property right to exercise complete dominion over its premises, and did not even claim that it would suffer any damage or inconvenience if union representatives were permitted access to the parking lot. Respondent's earlier assertion to the Union (*supra*, p. 5), that the prohibition was necessary to prevent littering of the parking lot, had previously been rejected by both the Board and this Court in the *Le Tourneau* case. As the Board there pointed out (54 N. L. R. B. at 1261), littering of parking lots is by no means as serious to an employer as would be littering "within buildings where production is being carried on." The necessity of cleaning litter from parking lots, like the necessity of cleaning it from city streets, is at most a "minor nuisance." *Martin v. Struthers*, 319 U. S. 141, 143. The same "obvious methods of preventing littering" (*Schneider v. State*, 308 U. S. 147, 162) which may result from the distribution of printed matter are open to an employer as are open to a municipality which wishes to keep its streets clean. In any event, and more important, the Board's order does not require respondent to bear even this minor burden, since it does not deprive respondent of the power to prevent littering of its parking lot. Here, as in *Le Tourneau*, the order expressly provides (R. 53) that respondent may impose reasonable regulations on the distribution to assure plant efficiency and discipline.

Moreover, the record fails to reveal any other prejudice to respondent's legitimate business interests in permitting union representatives to distribute literature on the parking lot. Thus, access to the parking lot does not entail access to the working area. This area is separated from the parking lot by a fence, and to gain admittance all persons must pass a guarded gatehouse (*supra*, p. 3). Respondent's suggestion to the court below that allowing access to the parking lot alone would require it to police the lot to prevent pilfering of the employees' automobiles raises a problem more fanciful than real. The union representatives would be present on the parking lot, not during working hours when the lot might be unprotected, but only at changes of shift when hundreds of employees are proceeding between their cars and the plant entrance and thus are in a position to safeguard their own interests. And should union representatives be on the lot when it was relatively deserted, the guard whom respondent already maintains at the gatehouse near the lot would seem to afford adequate protection. Presumably, since the parking lot is unfenced, this guard is already charged with some policing duties, and the presence of known union representatives would result in only a negligible increase to such duties. Moreover, it is, of course, clear that the Board's order does

not preclude respondent from taking effective measures to safeguard against such pilfering if it should occur.

The Board properly discounted respondent's further suggestion that solicitation by outsiders of union membership upon an employer's premises immediately before the employee enters upon the performance of his duties tends to disturb the employee and makes for strife between the employees, which would carry over into the work period, creating a production and discipline problem. To begin with, the argument is wholly inapplicable to distribution to employees leaving the plant on their way home. Moreover, even with respect to employees coming to work, distribution would have no greater disturbing effect on the work period because it took place on the parking lot instead of on noncompany property immediately adjacent to the plant premises, or because the distributors were union representatives rather than employees. Thus, what respondent's position in this respect really boils down to is that an employer should be permitted to ban all union discussion at or near his premises because it may provoke controversy among the employees. The argument is as invalid here as in *LeTourneau* and the companion case of *Republic Aviation v. National Labor Relations*

Board (324 U. S. 793), where it was also urged by the employers and rejected by this Court.⁵

The Board's conclusion, that respondent's parking lot prohibition constitutes an unreasonable and therefore illegal impediment to the effective exercise of the employees' organizational rights, thus rests on a careful weighing of the competing interests. Since no prejudice would result to respondent's legitimate interests from abrogation of the rule, but its continued enforcement would block an important avenue of communication between the union and the employees essential to the effective exercise of the employees' statutory rights, the Board was warranted in striking a balance in favor of the employees. This accommodation between the competing interests accords, we submit, with the guiding principles enunciated by this Court in the *LeTourneau* case.

2. The court below distinguished *LeTourneau* and held it inapplicable because the distributors there were employees while the distributors here were nonemployee union organizers. Basically, the ruling below rests on the premise that where

⁵ The ruling in *Boeing Airplane Co. v. National Labor Relations Board*, 217 F. 2d 369, 373, 375 (C. A. 9), that an employer might temporarily prohibit even the wearing of union buttons in the plant in order to maintain discipline following the termination of a strike which had created a tense and bitter atmosphere among the employees, is obviously inapplicable. No showing of any comparable situation has been made here.

the prohibition is against nonemployees rather than employees it cannot be said that "rights of employees have been invaded or abridged" (R. 252). This premise misconceives the scope of employee rights under the Act.⁶

The statutory guarantee of self-organization, as this Court recognized in *Thomas v. Collins*, 323 U. S. 516, 534, includes not only the right of employees "fully and freely to discuss and be informed" concerning organizational matters, but also the "necessarily correlative" right of a "union, its members and officials * * * to discuss with and inform the employees" about the advantages of self-organization. The Court further noted (323 U. S. at 533) that the right "to organize freely for collective bargaining * * * comprehends whatever may be appropriate and lawful to accomplish and maintain such organiza-

⁶The court below, in drawing a distinction between employees and outside organizers, relied on the dissenting opinion of Mr. Justice Reed in *National Labor Relations Board v. Stowe Spinning Co.*, 336 U. S. 226, 236-244, and gave it particular weight because Mr. Justice Reed wrote the opinion of the Court in *LeTourneau*. However, as we read that dissent, it does not support the distinction drawn by the court below. The basis of the dissent was that "Employment furnishes no basis for employee rights to the control of property for union organization *when the property is not a part of the premises of the employer, used in his business.* * * * Labor unions do not have the same right to utilize the property of an employer *not directly a part of the employment facilities*, that an employer has." 336 U. S. at 244 (emphasis added). The parking lot in the instant case, as in *LeTourneau*, clearly is a part of premises used by the employer in his business.

tion." As stated in the Senate Report on Violations of Free Speech and Rights of Labor (S. Rep. No. 1150, 77th Cong., 2d Sess., Part 1, pp. 4-5):

* * * The right of self-organization and collective bargaining is a complex whole, embracing the various elements of meetings, speeches, peaceful picketing, the printing and distribution of pamphlets, news and argument, all of which, however, are traceable to the fundamental liberties of expression and assembly. So compounded, the right of self-organization and collective bargaining is fundamental, being one phase of the process of free association essential to the democratic way of life.

Obedient to the broad legislative purpose incorporated in the Act, the Board has found from the outset of its administration that "The rights guaranteed to employees by the act include full freedom to receive aid, advice, and information from others, concerning those rights and their enjoyment" (*Matter of Harlan Fuel Company*, 8 N. L. R. B. 25, 32).¹ See S. Rep. No. 573, 74th Cong., 1st Sess., p. 6; 79 Cong. Rec. 7656, 7660; H. Rep. No. 1147, 74th Cong., 1st Sess., pp. 10,

¹ See, also, *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 104-114, 133, enforced, 116 F. 2d 816 (C. A. 6); *Matter of United Dredging Co.*, 30 N. L. R. B. 739, 748-751; *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 264-265; *Matter of American Cyanamid Co.*, 37 N. L. R. B. 578, 585-586, 588; *Matter of Ozan Lumber Co.*, 42 N. L. R. B. 1073, 1079-1081; *Lake Superior Lumber Corp.*, 70 N. L. R. B. 178, 179, enforced, 167 F. 2d 147 (C. A. 6).

16. Both before and after the passage of the Act it has, of course, been common practice for employees to avail themselves of the services of outside organizers.⁸ The necessity for invoking such assistance, particularly in the light of modern industrial conditions, requires little elaboration. Today, as everyone knows, it is commonly true that effective union organization can be best promoted by persons who devote their full time and knowledge to the task. Cf. H. Rep. No. 1147, 74th Cong., 1st Sess., p. 10.⁹ Union representatives who specialize in organization are experienced in organizing techniques and familiar with the complexities of present day labor law. Formal training in organizational methods is increasingly an indispensable prerequisite to organizing work. Unions have more and more drawn upon colleges and graduate and law schools for the knowledge and skills required by ambitious organizing campaigns. In addition, the labor movement has developed its own training schools for organizers comparable to the salesmanship training courses

⁸ Daugherty, Carroll R., *Labor Problems in American Industry* (1938), pp. 421-422; testimony of Paul H. Douglas at Hearings before Committee on Education and Labor, U. S. Senate, on S. 2926, *To Create a National Labor Board* (73d Cong., 2d Sess.), Part 1, p. 208; O'Reilly, Harry E., "Why We Are Strong," in *American Federationist* (June 1950), p. 13.

⁹ Miller, Glenn W., *Problems of Labor* (1951), pp. 88-96, 108, 121; U. S. Dept. of Labor, B. L. S. Bulletin No. 1000, *Brief History of the American Labor Movement* (1950), pp. 44-47; Peterson, Florence, *American Labor Unions* (1945), pp. 113-114.

of industry and the programs of business colleges and graduate schools.¹⁰ Employees who are unable to tap such organizational know-how gained from long experience or specialized training are manifestly handicapped in exercising their statutory right to self-organization for purposes of collective bargaining. And to the extent that otherwise appropriate channels of communication between employees and such organizers are blocked, as here, the employees' statutory rights are diminished.

Contrary to the view of the court below (R. 251), it should not be significant, even assuming it to be correct, that the record in the instant case may be "devoid of proof that any employees * * * were or desired to be members of the Union, or were in any way connected with or interested in the distribution by the union representatives of its literature." While the record (R. 65; 133, 100) actually suggests that the court's statement was inaccurate,¹¹ the decisive point in any event

¹⁰ See 73 Monthly Labor Review No. 5 (Nov. 1951), pp. 529-535, *ILGWU Approach to Leadership Training*; U. S. Dept. of Labor, B. L. S. Bulletin No. 1114, *Case Studies in Union Leadership Training* (1951-1952); Watkins & Dodd, *Labor Problems* (1940), pp. 636-641; Cooke & Murray, *Organized Labor and Production* (1940), pp. 222-233; Peterson, F., *American Labor Unions* (1945), pp. 160-168.

¹¹ The record (R. 133, 100) shows that prior to June 15, 1953, the first date on which union organizers attempted distribution near the plant, at least one of respondent's employees came to the Union to request organizational information, and thereafter interested employees furnished the Union with the names of other employees who might be interested.

is that employee rights are no less involved merely because organizational information is disseminated by the union on its own initiative rather than by the employees or upon their invitation. In either case, the distributors are "pursuing the same end, namely, to advise the workers at the plant of their rights under the Act and of the purported advantages of unionization" (Judge Healy dissenting in *National Labor Relations Board v. Monsanto Chemical Co.*, 225 F. 2d 16, 22 (C. A. 9), pending on petition for certiorari, No. 492, this Term). Where lack of interest stems from apathy or ignorance of the advantages of self-organization, employees cannot realize the benefits of the statutory guarantees unless those advantages are called to their attention. Indeed, it has been noted that "very few American employees organize themselves. They have to be organized." 93 Cong. Rec. 4432: Adequate opportunity to receive information from outside organizers is therefore both appropriate and essential for the exercise and enjoyment of the employees' right of self-organization, and therefore necessarily encompassed within its protection.

An employer may not restrict the exercise of that right solely on the ground that his property rights entitle him to exclude "trespassers." This Court has recognized that the grant to employees in Section 7 of the Act of the right to engage in concerted activities for purposes of self-organiza-

tion may properly supersede the employer's right, as property owner, to exercise absolute dominion over the property on which such activities occur. As stated in *National Labor Relations Board v. Stowe Spinning Co.*, 336 U. S. 226, 232, "It is not 'every interference with property rights that is within the Fifth Amendment * * *. Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.'" And, of course, *National Labor Relations Board v. LeTourneau*, *supra*, applies this familiar principle. So, also, in *Marsh v. Alabama*, 326 U. S. 501, this Court held that a state violated the Constitution by punishing criminally an individual who, contrary to the command of the corporation which owned a company town, utilized the streets of the town for the purpose of distributing religious literature. In response to the contention that the state's action was valid because the corporation, in the exercise of its property rights over the streets, could exclude trespassers, the Court said (326 U. S. at 505-506):

We do not agree that the corporation's property interests settle the question * * *. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who

use it. Cf. *Republic Aviation Corp. v. Labor Board*, 324 U. S. 793, 798, 802; n. 8.

Here, the considerations which led respondent to provide a parking lot for its employees were obviously the necessity of attracting employees to a plant in a rural area, not served by public transportation, and bordered by a highway on which parking was prohibited (R. 66, 68; 102-103, 113-114, 224). Having opened up its property for employee use for its own advantage, respondent cannot exclude as trespassers persons whose presence is necessary for an effective exercise of the employees' statutory rights. The necessity for protecting the statutory rights of employees who use the plant parking lot, no less than the necessity for protecting the constitutional rights involved in *Marsh v. Alabama*, affords ample basis for superseding the "dominion" which the employer-owner of a parking lot may exercise over his property.¹² Indeed, even the court below recognized (R. 251, 252), as both the Board and the courts of appeals have generally held, that where employees live on company property the employer's proprietary interest may properly be subordinated to the employees' statu-

¹² The *Marsh* case cannot be distinguished on the ground that the sidewalks there were freely used by the general public. This Court expressly refused to disturb the holding of the Supreme Court of Alabama that the corporation had not dedicated its streets to the public, and that the distributor of the literature was therefore a trespasser (326 U. S. at 505, n. 2).

tory rights so as to permit outside organizers to have access to them for the purpose of assisting them in the exercise of these rights.¹³ The premise on which such cases stand is that access is necessary to the effective exercise of the employees' rights. By the same token, the employer's proprietary interest in the instant case may properly be subordinated to the employees' interest in self-organization for purposes of collective bargaining. And, as we have shown, the Board was fully justified in concluding that access to the employees at the plant property is necessary if they are to make effective use of the statutory guarantees.¹⁴

¹³ *Matter of Harlan Fuel Co.*, 8 N. L. R. B. 25, 31-32, 63 (employees living in company town denied access to union representative); *Matter of West Kentucky Coal Co.*, 10 N. L. R. B. 88, 105-106, 133 (same); *Matter of Weyerhaeuser Timber Co.*, 31 N. L. R. B. 258, 270 (employees living in company-owned logging camp denied access to union representatives); *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C. A. 6) (same). Cf. *Matter of Waterman Steamship Corp.*, 7 N. L. R. B. 237, enforced, 309 U. S. 206, 224-226 (employees living aboard ship denied access to union representatives); *Matter of Cities Service Oil Co.*, 25 N. L. R. B. 36, 57 (same), enforced as modified, 122 F. 2d 149, 152 (C. A. 2); *Matter of Richfield Oil Co.*, 49 N. L. R. B. 593 (same), enforced as modified, 143 F. 2d 860 (C. A. 9).

¹⁴ The decision of the Seventh Circuit in *Marshall Field and Company v. National Labor Relations Board*, 200 F. 2d 375, relied on by the court below, affords little support for its conclusion. That case did not involve the right of union organizers to enter upon a company parking lot, but rather their asserted right to enter the employer's store for the pur-

3. The view of the court below that the employer's proprietary interest must be deemed to be paramount except where the ban against access by outside organizers is discriminatorily motivated or where the employees work and live on company property does not withstand analysis.

To be sure, plant rules which discriminate against union solicitation or distribution of union literature (e. g., rules which permit solicitation for all causes except unions, or which permit distribution of all types of literature except union) may by that token alone be rendered invalid.¹⁵ But it by no means follows that proof of nondis-

pose of engaging in union activity. Since the record in that case disclosed that the union organizers had opportunities to communicate with the employees at some locations both in, and at the entrances to, the store, the Seventh Circuit concluded that there was no evidentiary support for the Board's finding that the ban against further access to the employees elsewhere inside the store substantially impeded the employees' exercise of their statutory rights (200 F. 2d at 379, 382). Recognizing, moreover, that employer interests must be accorded greater weight within the buildings where production is being carried on, the court differentiated between access to the store proper and access to company property outside the store. The court sustained (*id.* at 380, 382) that portion of the Board's order which precluded the employer from barring nonemployee union organizers from the private alleyway owned by the employer and separating its store buildings, despite the fact that the employees did not live on company property.

¹⁵ *E. g.*, *National Labor Relations Board v. William Davies Co.*, 135 F. 2d 179, 181 (C. A. 7), certiorari denied, 320 U. S. 770 (discriminatory promulgation of no-solicitation rule); *National Labor Relations Board v. Denger Tent & Awning Co.*, 138 F. 2d 410, 411 (C. A. 10) (discriminatory promul-

crimination necessarily establishes the legality of such a rule. Just as a state law "certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike" (*Murdock v. Pennsylvania*, 319 U. S. 105, 115), so an employer's rule against distribution may violate the statutory injunction against interference even though it classifies union literature along with types of printed matter which have no specific statutory protection and bans the distribution of all alike. The "test of interference, restraint and coercion under § 8 (1) of the Act [now Section 8 (a) (1)] does not turn on the employer's motive * * *." *National Labor Relations Board v. Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7). In Section 8 (a) (1), Congress

gation and enforcement of no-solicitation rule): *Bonwit Teller, Inc. v. National Labor Relations Board*, 197 F. 2d 640 (C. A. 2), certiorari denied, 345 U. S. 905 (discriminatory enforcement of no-solicitation rule); *National Labor Relations Board v. American Furnace Co.*, 158 F. 2d 376, 379 (C. A. 7) (discriminatory enforcement of a no-distribution rule); *Westinghouse Electric & Mfg. Co. v. National Labor Relations Board*, 112 F. 2d 657, 659-660 (C. A. 2), affirmed, 312 U. S. 660 (discriminatory refusal to permit one of two contesting unions to use company premises for holding meetings); *National Labor Relations Board v. Waterman Steamship Corp.*, 309 U. S. 206, 225-226 (discriminatory refusal to issue shipboard passes to union representatives); *National Labor Relations Board v. Stowe Spinning Co.*, 336 U. S. 226 (discriminatory refusal to permit a union to use a meeting hall in a company town).

was concerned with safeguarding employees from conduct which abridges their exercise of guaranteed rights, whatever the motive for the infringement.

For purposes of the present case, this point was settled in *LeTourneau*, where "no union bias or discrimination by the company" (324 U. S. at 797) prompted the rule prohibiting employees from distributing literature on the parking lot. In holding the rule invalid as an unreasonable impediment to self-organization, despite the absence of any discriminatory purpose on the part of the employer, this Court conceived the basic issue to be one of "working out an adjustment between the undisputed right of self-organization assured to employees under the * * * Act and the equally undisputed right of employers to maintain discipline in their establishments." *Id.* at 797-798. In this frame of reference, the absence of a discriminatory motive on the part of the employer in denying union organizers access to employees on a plant parking lot is irrelevant.

Nor can the alternative criterion of the court below, whether the employees live on company property, be determinative of the validity of the prohibition against access to the parking lot. Whether access by outside organizers to employees away from the area adjacent to the plant is difficult or impractical because the employees work and live on company-owned property or because, as here, they live in widely scattered communities,

the issue in either case is whether the denial of access to them on the employer's premises constitutes such a serious impediment to the employees' exercise of their statutory rights as to require subordinating the employer's proprietary interest to the employees' organizational rights. In both types of cases, the Board's function is "to determine what in fact would be the prejudice to the interests of the employer in permitting access * * *, and what would be the benefit to the employees, and whether the benefit prevailed over the prejudice, or the prejudice prevailed over the benefit." *National Labor Relations Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147, 152 (C. A. 6).

On this point, again, the *LeTourneau* decision is controlling here. There, as the Court pointed out, it could not "properly be said that there was evidence or a finding that the plant's physical location made solicitation away from company property ineffective to reach prospective union members" (324 U. S. at 798). Nor was the plant "like a mining or lumber camp where the employees pass their rest as well as their work time on the employer's premises, so that union organization must proceed upon the employer's premises or be seriously handicapped" (324 U. S. at 799). Although other means or avenues for disseminating union literature away from the plant area were not foreclosed, the Court nevertheless concluded that the prohibition against distribu-

tion on the company parking lot was an unreasonable impediment to the employee's exercise of their statutory rights and hence invalid.

The place of work, or its immediate vicinity, has been recognized to be the "most effective place for the communication of information and opinion concerning unionization" (*Bonwit Teller, Inc. v. National Labor Relations Board*, 197 F. 2d 640, 645 (C. A. 2), certiorari denied, 345 U. S. 905). The Board's conclusion that union organizers, if they are to have adequate opportunity to communicate organizational information to employees, must be able to distribute literature on the plant parking lot, if it is not feasible to do so on the public property immediately adjacent to the plant, is consistent with this acknowledged fact and follows the underlying premise in *Le-Tourneau*.

Where distribution of pamphlets is aimed at the general public—as in the case of religious tracts, political campaign literature, advertisements, or appeals for charity—"perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people" (*Schneider v. State*, 308 U. S. 147, 164). But labor organizations, which seek to reach a particular group, can effectively utilize door-to-door distribution only where the employees' homes are almost contiguous—as, for example, in company towns—or in communities where the employees' homes are clustered about the plant.

Where, as here, the employees' homes are widely scattered, obvious practical hardships attend home distribution to any large number of them.¹⁶ In the absence of a list of names and addresses, distribution on a door-to-door basis, or through the mails is both impractical and ineffective. Even assuming that such a list could be obtained—manifestly a more difficult procedure for nonemployee union organizers than for employee distributors already familiar with their fellow employees—the cost and time involved in door-to-door distribution may well be prohibitive. And distribution through the mails, if not equally costly and time consuming, is at any rate a poor substitute for personal contact, affording no opportunity for the distributor to answer the questions which the literature is bound to evoke. Concrete illustration of the difficulties of distribution away from the plant may be found in the experience of the Union in the instant case. The Union was able to locate and mail literature to only approximately one-fifth of respondent's 500 employees, and, in order to visit the comparatively few homes tracked down, had to travel to communities 11, 21, 26, and 30 miles from respondent's plant (R. 52, n. 3, 67-68; 182, 99-102). In short, door-to-door distribution of union literature is normally so impractical that labor organizations must rely heavily upon access to the

¹⁶ See Barbash, Jack, *Labor Unions in Action* (1948), p. 26.

employees in the vicinity of the plant if they are to get printed matter into the hands of employees.¹⁷

Other channels for communicating organizational information to employees away from the plant are equally inadequate or ineffective. Comprehensive telephone communication, like home distribution, requires a list of names and addresses, and depends, in addition, upon the employees' having telephones and being at home to receive calls. Only by the most persistent effort was it possible for the Union in the instant case to reach even slightly more than half of respondent's employees by this means; only 60 percent of the employees had telephones. (R. 68; 211-212). Chance meetings with identifiable employees on the street cannot be equated with systematic distribution of union literature at or near the plant.

¹⁷ See Weyforth, William O., *The Organizability of Labor* (1917), p. 16; Walsh, G. Raymond, *C. I. O. Industrial Unionism in Action* (1937), pp. 69, 131, 169-170; Brooks, R. R., *When Labor Organizes* (1938), p. 10; Brooks, R. R., *As Steel Goes* (1940), p. 117 and accompanying photograph; Barbash, Jack, *Labor Unions in Action* (1948), p. 26; International Brotherhood of Teamsters, *Some Notes for Trade Union Organizers* (1955), pp. 11, 16-17; Cooke & Murray, *Organized Labor and Production* (1949), p. 46. See also, *Karp Metal Products Co., Inc.*, 42 N. L. R. B. 119, 134-135, enforced, 134 F. 2d 954 (C. A. 2); *Revlon Products Corp.*, 48 N. L. R. B. 1202, 1207-1208, enforced, 144 F. 2d 88 (C. A. 2); *Wells-Lamont-Smith Corp.*, 42 N. L. R. B. 440, 448; *Kohen-Ligon-Folz, Inc.*, 36 N. L. R. B. 1294, 1299-1300, enforced, 128 F. 2d 502 (C. A. 5); *Paragon Die Casting Co.*, 27 N. L. R. B. 878, 881, 883, 886.

Moreover, union meetings away from the plant area are usually poorly attended by employees tired from their day's work and faced with added travel or confronted with the responsibilities and demands of family life.¹⁵

Even if alternative devices were more effective than they actually are, there would remain the highly significant point that, as the Board pointed out (R. 74), "speech is not the only mode of communication, nor is it sufficient that this channel alone be free. Effective organization requires the use of printed literature and of application and membership cards, and these modes of communication are also protected by the Act." The Act, like the Constitution, "embraces the right to distribute literature, *Lovell v. Griffin*, 303 U. S. 444, 452, and necessarily protects the right to receive it." *Martin v. Struthers*, 319 U. S. 141, 143; see also *Jamison v. Texas*, 318 U. S. 413, 416. This Court has had occasion to note that "pamphlets have proved most effective instruments in the dissemination of opinion" (*Schneider v. State*, 308 U. S. 147, 154; *Lovell v. Griffin*, 303 U. S. 444, 452), and that their distribution is important to the cause of employee organization (*Martin v. Struthers*, *supra*, at 145-146). Both the nature

¹⁵ For these reasons, attendance at union meetings even after employees are organized is notoriously poor. See Kopald, S., "Democracy and Leadership," in Bakke & Kerr, *Unions, Management and the Public* (1948), pp. 180-181; Note, 61 Yale L. J. 1066, 1074-1075 (1952); Millis and Montgomery, *Organized Labor* (1945), pp. 246-247.

of the subject matter and the availability of those to be reached make the plant premises "natural and proper places" for the distribution of union literature (*Schneider v. State*, 308 U. S. 147, 163). Under the National Labor Relations Act, as under the Constitution, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Ibid.*

4. Finally, the assertion of the court below (R. 251-252) that the Board's order would compel respondent to "institute a discriminatory application in favor of a particular union of its non-distribution rule," and jeopardize the neutrality required of it by Section 8. (a) (2) of the Act, must be rejected. The Board's order directs respondent to cease and desist from enforcing its no-distribution rule, not only against representatives of the Union immediately involved, but also against "any other labor organization" (R. 53). The contention that merely permitting distribution on the parking lot would constitute "support" of a union in violation of Section 3 (a) (2) was also pressed in this Court by the employer in *LeTourneau* and rejected without discussion.¹⁹ See also *National Labor Relations Board v. Stowe Spinning Co.*, 336 U. S. 226, 230-231. The mere fact that an employer does not interfere with distribution of union literature

¹⁹ See briefs for the *LeTourneau Co.*, pp. 19-20 and for the Board, pp. 39-44, No. 452, October Term, 1944.

constitutes no evidence of favoritism or support toward the labor organization involved. Only if the employer interferes with similar activities of a competing labor organization, or himself instigates organizational activities, or affirmatively cooperates with a labor organization to increase the effectiveness of its proselytizing by lending to it an appearance of employer sponsorship does his conduct take on the color of illegality. Permitting employees to receive literature from union organizers on the parking lot constitutes aid to organization only in the negative sense that any noninterference with the exercise of organizational rights amounts to "aid." The result here is no different, and no less exempt from the proscription of the Act, than the "aid" to organization in the *Republic* and *LeTourneau* cases.

II

The Board's order is valid and proper.

In the court below respondent urged that the Board's order was too broad in its scope and for that reason should not be enforced as it stood. The order, in relevant part, requires respondent to cease and desist from "Prohibiting the distribution of union literature by union representatives on its parking lot and alongside the walkways from the gatehouse to the parking lot, and drive * * *" and from "Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise" of their rights under the Act. (R. 53-54). While

the court below announced (R. 250) that it regarded the order as too broad in so far as it enjoins respondent from engaging in "any like or related acts", it found it unnecessary to deal further with the point because of its disposition of the case. Since, however, respondent is urging here again that the order is too broad,²⁰ and since a remand of the case in the face of the expressed view of the court below would result in a modification of the order, we turn to this issue.²¹

As this Court has pointed out, "It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. * * * Having found the acts which constitute the unfair labor practice the Board is free to restrain the practice and other like or related unlawful acts." *National Labor Relations Board v. Express Publishing Co.*, 312 U. S. 426, 436. Cf. *Federal Trade Commission v. Beech-Nut Co.*, 257 U. S. 441, 456. A rule which would require a Board order to be limited solely to the specific unfair labor practice found and preclude the Board from enjoining "like or related" conduct would, in the words of this Court, "invite easy evasion" and "give tremendous impetus to [a] program of experimentation with disobedi-

²⁰ Opposition to Petition for Certiorari, pp. 12-13.

²¹ The question was reserved in the petition for certiorari, p. 2, n. 2.

ence of the law * * *." *McComb v. Jacksonville Paper Co.*, 336 U. S. 187, 192, 193.

The Board's order in the instant case comports with the foregoing principles. Having found that respondent's prohibition against the distribution of union literature on its parking lot constituted an unfair labor practice, the Board properly directed respondent, with reasonable specificity, to rescind its rule and to refrain from encroaching upon the employees' statutory rights by like or related acts. Moreover, the record in the instant case furnishes additional warrant for the order. Respondent's ban against the distribution of union literature on its parking lot applies not only to outside organizers but also—contrary to the specific ruling in *LeTourn-eau*—to employees as well (R. 68-69; 203, 202-206, 186-187, 215). In these circumstances, the order appropriately guards against the threat of future violations similar to that found. *Express Publishing Co.*, *supra*, at 436.

CONCLUSION

For the reasons stated, the judgment of the court below should be reversed and remanded to the court below with directions to enforce the order of the Board.

Respectfully submitted:

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,
National Labor Relations Board.

NOVEMBER 1955.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

FINDINGS AND POLICIES

SECTION 1. * * *

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

* * * * *

SEC. 2. When used in this Act—

* * * * *

(3) The term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise. * * *

* * * * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such

person a complaint stating the charges in that respect, and containing a notice of hearing before the Board, or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint * * *

(c). The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act * * *.

No. 250

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APPENDIX TO RESPONDENT'S BRIEF

**In the
United States Court of Appeals
FOR THE FIFTH CIRCUIT**

No. 15,311

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

THE BABCOCK AND WILCOX COMPANY,
Respondent.

**ON PETITION FOR ENFORCEMENT OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD**

**U. S. COURT OF APPEALS
FILED**

MAR 9 1955

John A. Feehan, Jr.
CLERK

**FISHER, McLAUGHLIN &
HARRISON,**

**Liberty National Bank
Building,
Paris, Texas,**

Attorneys for Respondent.

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Respondent.

(11) MR. FISHER: Thank you, Sir.

Mr. Martin, before any evidence is received, the respondent would like to renew and call to the attention of the Examiner the motion to dismiss which has heretofore been acted upon, and also a motion for a bill of particulars which has heretofore been acted upon. I urge both of those motions at this time with only the modification as to the bill of particulars which is shown by the Examiner's order and the response to the order made by General Counsel;

.

(19) TRIAL EXAMINER MARTIN: I will deny Mr. Fisher's motion and I will grant the General Counsel's motion to strike the various paragraph from the complaint as enunmerated by Mr. Rhea.

Now, then, the motion is in effect renewing your motions that are contained in General Counsel's Exhibit 1-F?

* * * * *

(20) TRIAL EXAMINER MARTIN: Very well, we will resume.

Did you wish to urge anything further upon me before I pass on your motions contained in General Counsel's 1-F, Mr. Fisher?

MR. FISHER: Please, Your Honor.

First, in view of the action of the Examiner in striking Paragraphs 5, 6 and 7 of the complaint and portions of Paragraphs 10 and 11, and all of Paragraph 9, respondent, in addition to all other grounds for dismissing the complaint, including the ground stated orally at the hearing and the grounds set out in the exhibit, urges that the complaint is wholly disconnected with the purported charge, General Counsel's Exhibit 1-A, which charges only the termination of the employment of Temple G. Ray and a refusal to employ the named employee, Temple G. Ray. Then by acts set forth in Paragraph A above and by other actions and conducts, it by its officers, agents and employees interferred with, restrained and coerced its employees in the exercise of the rights guaranteed in Section

7 of the Act. The point respondent is endeavoring to make in this connection is that the complaint as it now stands is not only not based upon any bona fide charge but is wholly the act of General Counsel or the Regional Director and constitutes an original complaint and charge on (21) the part of General Counsel and the Regional Director, or the Board, which ever way may properly express it.

There is a motion for a bill of particulars, but no particular or specific motion to strike so far as I can remember in respondent's answer filed in connection with respondent's answer involving Paragraph 12 in the complaint, and when the Examiner has acted upon respondent's to dismiss, well, then, we would like to present a motion to strike certain portions of the complaint if the Examiner should overrule our motion to dismiss the complaint in its entirety.

* * * * *

(22) MR. FISHER: I didn't so state, but upon the same ground and grounds, I desire to move that Sections 2, Sub Sections 6 and 7 of the Act be stricken from the third and fourth line of the complaint, and that motion is intended to be addressed to each separately as well as collectively.

TRIAL EXAMINER MARTIN: I will deny that motion and those motions.

* * * * *

(114)

C. T. RAY,

a witness called by and on behalf of the General Counsel;

being first duly sworn, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name and address, please.

THE WITNESS: C. T. Ray, 530 Irwin Keasler Building, Dallas, Texas.

DIRECT EXAMINATION

* * * * *

(128) Q. (By Mr. Rhea) Now I will hand you, Mr. Rhea, what we have marked for identification as GC-4 and ask you to state for us, if you will, please, what that is.

A. This is a map covering the area from which the employees of the Babcock & Wilcox plant were hired within these areas.

* * * * *

(139) TRIAL EXAMINER MARTIN: Let me ask two or three questions.

* * * * *

(140) MR. FISHER: Now, respondent objects to all of this testimony being brought out by the Examiner, the testimony having been given when the Respondent couldn't object except to interrupt the witness in the middle of what he was saying.

TRIAL EXAMINER MARTIN: You are objecting on the ground that is hearsay?

MR. FISHER: We move to strike it.

TRIAL EXAMINER MARTIN: I will let the matter stand even though it is hearsay.

(142) Q. (By Trial Examiner Martin) Now, the question is, and I want this question answered, I want to know where you went to contact people you thought that were employees of the company; now, don't tell me you went to contact people that you knew were, I want to know where you went to contact people you thought were employees of the company?

A. I didn't go anyplace to contact people that I thought were employees of the company.

(147) (General Counsel's Exhibit No. 4, Witness Ray, was received in evidence.)

(151) CROSS EXAMINATION

Q. (By Mr. Fisher) Mr. Ray, how much time would you say you had spent in Paris and in and around Paris?

A. Working on the Babcock & Wilcox plant?

Q. No, in your lifetime?

A. I spent approximately, oh, I'd say in and out of here approximately a year, maybe a year and a half.

(154) Q. (By Mr. Fisher) And you know that the sun rises in the east and sets in the west, do you not?

A. I know that from learning it in school, I am not that ignorant.

* * * * *

(155) Q. The first name of a town that you gave in response to Mr. Rhea's question that you had visited that wasn't shown on (156) the map, GC-3, was Cunningham, Texas, was it not?

A. That is right.

Q. Why did you tell the Examiner that Cunningham, Texas, was not shown on the map?

A. Because I have never been able to find it on the map.

Q. Have you ever looked?

A. Yes, I have. How do think I ever tried to get there if I didn't look on the map.

Q. Did you really get there?

A. Yes, I did.

Q. Where is it?

A. Back out this way.

Q. What direction is that?

A. I don't know what direction that is; I asked and I found my way out there. I don't have all that compass on the car and all that stuff.

* * * * *

(157) Q. And that is the direction in which you said Cunningham was from Paris?

A. That is right.

Q. All right, now, with reference to north, south, east and west, which direction is that from Paris?

MR. RHEA: If the Examiner please, it is quite clear in (158) this testimony that this witness does not know the distance north, south, east and west. It has been brought out three or four times in this testimony, and I believe that this is highly irrelevant, irregular and immaterial and improper for respondent Counsel to continually refer to the directions north, south, east and west, and I think the Examiner should make it clear to him when he reached the limits of such expiration.

* * * * *

(159) Tell us if you can, what direction you were pointing?

THE WITNESS: I don't know.

* * * * *

(161) Q. Well, which is north on this map, the top or the bottom or one of the other sides?

A. I don't even know that.

* * * * *

(170) Q. (By Mr. Fisher) How many times did you go to Tigertown?

A. I don't know; I have no idea, I didn't count them. I have no idea how many times I went out there.

Q. The drivers on the side where you were stationed, did they reach out to the man in the front of you and pick up circulars after you reached the drive?

A. Yes, sir.

(751) CROSS EXAMINATION

(752) Q. When a car wants to turn to the right, is it necessary for him to get into a right lane on the company driveway before he reaches the roadway?

A. No, sir, I wouldn't think so.

Q. Let me ask you if employees who carry other riders move over on to a right or south lane before they reach the State Highway, normally, or, usually, either one they prefer?

A. Will you please state that again?

Q. When drivers in cars who want to pick up passengers, who may be other employees, do they normally move to a right or south lane before they move directly toward the State Highway to pick up passengers around the gate?

(753) A. Well, you see, they are in a parking lot and like if somebody else is driving with somebody else, is that what you mean?

Q. Yes.

A. They just walk out in the cars together and get in them and go out like anybody else.

(756) HENRY GRADY WILSON,

a witness called by and on behalf of the Respondent, being first duly affirmed, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name and address, please.

THE WITNESS: Henry Grady Wilson, Sumner, Texas, Route 1.

DIRECT EXAMINATION

* * * * *

(758) Q. Do you or do you not recall any occasion since you have been working at the Babcock & Wilcox Company plant that union literature was being passed out by anyone out near the entrance of the north driveway of the plant into the farm-to-market highway?

A. Yes, sir.

Q. Can you fix the date of the occasions, and I mean the approximate date of the occasion or occasions that you observed union literature being passed out?

A. I am sorry. I can't.

Q. Sir?

A. The approximate date, I am sorry, I can't do it.— July, I just don't remember.

Q. You mentioned the month of July.

A. I might be just bad wrong on that.

Q. Can you estimate how many times you were out there during this year and a half?

A. I think it would be unfair to estimate it because I have no idea, no idea how many times I was out there.

* * * * *

(179) Q. Have you been to any community in Lamar County known as Cothran?

A. I don't think I have.

* * * * *

(180) Q. All right, I will see if I can assist you, Mr. Ray. Can you read right there to the Trial Examiner? My bifocals are pretty weak, but you try reading there where I am pointing, which is southeast of Paris, the exact direction that you pointed with your finger, and see, sir, if you will not now follow me, C-u-n-n-i-n-g-h-a-m, and that you have marked with a pencil through the "H-A" and probably the "G"?

A. I can see that.

Q. All right, now, you have looked again, and you have told me three times, according to what you say, that it is not on there. Now, what are you going to tell the Trial Examiner about what is on there?

* * * * *

(181) THE WITNESS: Said that Cunningham was on the map?

I just now admitted it to him when he showed it to me. I said before then I did not see it on the map. Now, I did

not see it on the map. Now, if you want me to tell you a lie about it, hell, I saw it three days ago, if that is what you want me to tell you.

Q. (By Mr. Fisher) But you see it now?

A. Yes, sir.

* * * * *

(182) Q. Now, having looked at Cunningham on the map, will you now state to the Trial Examiner which direction it is from Paris on the map?

A. I still don't know which direction it is from Paris on the directions. I told you it was back out this way.

Q. Now, you do recall having testified that the top of the map was north, do you not?

A. That is right.

* * * * *

(183) Q. (By Mr. Fisher) You do recall testifying since you have been on the witness stand that the top of the map was north?

A. Yes, by looking at the bottom here of this thing here on the bottom.

Q. Now, sir, do you recall testifying that the right side of the map was east?

A. Yes, by the same method.

Q. And you agreed then, of course, that it followed that the left side is West and the bottom south?

A. Right.

Q. That is right?

A. Yes, sir.

Q. Now, bearing in mind what you have said, please look at Cunningham as is shown in the map and look at Paris on the map and state to the Examiner which direction Cunningham is from Paris?

A. Well, I still don't know which direction it was in.

Q. All right, sir, you do see Paris on the map?

A. That is right.

Q. And you do see Cunningham on the map, do you, sir?

A. Yes.

Q. All right, now, state to the Examiner from looking at the map which direction Cunningham is from Paris?

(184) A. I couldn't say, I don't know.

* * * * *

(197) TRIAL EXAMINER MARTIN: Let me ask you this, Mr. Witness, about how many people live in Cunningham, have you any idea?

THE WITNESS: No, sir, I don't have any idea what the population of it would be. It would be very small.

TRIAL EXAMINER MARTIN: About how many live in Tigertown?

THE WITNESS: I don't know that, either. It is very small. All of those communities are very small, maybe 50.

or 75 or a hundred people, something like that, maybe not that many.

* * * *

(217) Q. (By Mr. Fisher) Now, Mr. Ray, can you recall when you referred to Ambia, can you recall one thing in the world about Ambia in Lamar County other than this store that you don't know on which side of the road it is situated?

(218) A. No, only that there is not too many people live up in that part of the country and that is about all that I can remember about the thing other than there is a store there.

* * * *

Q. And how far do you say it is from Paris?

A. I will say Ambia is about 21 miles, 18 to 21 miles, something like that.

* * * *

(331) Peter P. Haubner,
called as a witness by and on behalf of the General Counsel,
being first duly sworn and examined and testified as
follows:

* * * *

(382) EXAMINATION.

Q. (By Trial Examiner Martin) Mr. Haubner, have you sent out any leaflets through the mails to Babcock & Wilcox employees which were just, shall I say, advertising matter for the union?

A. We did not.

Q. The things you sent through the mails were to people who had signed up for the union, and only those people?

A. Must I answer it in that manner, Mr. Examiner? Again, it is reflecting as to whether or not that person had or had not signed or even indicated whether they have signed.

Q. Well, can you give me any idea what sort of information you conveyed through the mails to these employees, just generally?

(383) A. Information conveyed to the employees on these particular individual letters were rates pertaining to other Babcock plants, and so forth, and conditions of the contractual relations.

* * * * *

(385) CROSS EXAMINATION (continued.)

(403) Q. (By Mr. Fisher) Mr. Haubner, at that time and on that occasion when Mr. Williams asked you to remove yourself from the company property, did you remove yourself from the property?

A. Mr. Fisher, as I stated before, I did not know where the company property started or stopped and I didn't know whether I removed myself from the property or not.

Q. Well, did you—

A. I did move down toward the highway, yes.

Q. All right, did you move down into the highway or the entrance from the highway to the driveway and onto that portion of that entrance as covered by gravel?

A. No, sir, Mr. Fisher, I had never left the concrete until we finally decided to leave. I stayed on out on the concrete at all times. I was not down in the gravel section because automobiles were in there and I couldn't have gotten in there if I had wanted to. I was on the cement.

* * * *

(532) HOMER L. COLMAN,

was called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

* * * *

(533) DIRECT EXAMINATION

* * * *

(534) Q. Since you have been employed at Babcock & Wilcox Company, has there been any occasion on which anyone was distributing any literature or circulars of any kind when you were going into or leaving the plant?

A. Either on two or three occasions when we were leaving, they were at the intersection of the highway.

Q. What do you mean by "the intersection of the highway"?

A. Well, where we leave the B&W property, where we enter the highway from the personnel office there, oh, I

guess it is close to a hundred yards, I suppose, from where we get in our cars to where we enter the highway.

* * * * *

(541) CROSS EXAMINATION

Q. (By Mr. Rhea).

* * * * *

(552) Q. Now, there was a third time, I believe you said, when literature was passed out, is that the right statement?

A. I believe there was a third time.

(553) Q. Can you give us any help with reference to when that occurred?

A. No, sir I couldn't. It was probably a month later. It seemed to me like that if it was three times or two, I would say that they were a month apart.

Q. Now, I believe it is your testimony that you couldn't identify any of the men that you saw there passing out literature of some kind; is that right, sir?

A. That is right.

Q. Would it help you any to see Mr. Haubner standing up? Do you think that that would assist you in any way in identifying him as one of the men?

A. No, sir, I wouldn't say that I remembered him or didn't.

Q. Do you have any recollection now as to about how tall the man was or how old he was?

A. I remember one of two occasions there was a pretty good sized fellow out there.

Q. Now, was this the man that you are now talking that Mr. Williams was talking to?

A. I wouldn't definitely say. I wouldn't say it was because it would be one on the right side and one in the middle and one on the left. There would be three because the cars park there at the entrance of the highway. Some go to the right and some to the left and the way I remember it, there were three of them and he was talking to the man on the left-hand (554) side of the driveway.

* * * * *

(556) TRIAL EXAMINER MARTIN: One question, Mr. Colman, were there any employees trying to get into the plant from the highway or was all the traffic going out of the plant at that hour?

THE WITNESS: I expect everything was already in of the night shift. The night shift was already in.

TRIAL EXAMINER MARTIN: Are you sure there was a night shift at that time?

THE WITNESS: Yes, sir, I will say that.

TRIAL EXAMINER MARTIN: When does the night shift start?

THE WITNESS: At 5:30 in the afternoon.

TRIAL EXAMINER MARTIN: As a matter of custom, the men were driving in for the incoming shift and they

had come in and parking their cars and were either clocking in or ready to clock in at the beginning of the shift, and that is all done before the outgoing shift gets to the parking lot to get (557) their cars and drive home; is that correct?

THE WITNESS: That is right.

* * * * *

(584)

HUNTER RICHEY,

was called as a witness by and on behalf of respondent, being first duly sworn, was examined and testified as follows:

* * * * *

(604)

REDIRECT EXAMINATION

Q. (By Mr. Fisher) Mr. Richey, how do you travel from home to your work, usually?

A. In what conveyance?

Q. Yes.

A. There are three of us boys that ride together.

Q. How long have you been engaged in the practice of three (605) of you riding together to and from work?

A. About the last sixty days.

Q. Prior to that time, how did you travel to and from your work at the Babcock & Wilcox Company?

A. There were six or seven of us that came in one car.

Q. And where did the six or seven of you live?

A. We lived there in the Forest Hill Community, neighbors.

Q. During the time that you have either been traveling with five or six others or the time that you have been traveling to and from your work with two other persons, have you received any union literature or had any union literature of any kind offered you while on your way to or from work?

A. Yes, on two occasions.

Q. Did you or did you not receive the literature that was offered you on the two occasions?

A. I did receive it.

Q. Did or did not the other persons riding with you receive the same literature that you received?

A. Yes.

Q. Now, please, Hunter, fix as best you can, and I realize you are sleepier than I am, the date or each one of those dates just as best you can. If you don't have any idea about the date, if you will state about how long ago it was, either the first time or the last time and then about the length of time between the two times, that will be fine. Just give your (606) best judgment, what ever it is.

A. It is along the last of July, to the best of my knowledge, that I received the first literature.

Q. And when did you receive the second literature?

A. A week or so later.

Q. Did you or did you not receive the literature on both occasions at the same place?

A. Yes, sir.

Q. Where was that place?

A. It was in the driveway as we were going out as we were going home.

Q. Did you or did you not on either of those occasions see Louis Williams near or on the driveway?

A. No, sir, I did not see him out there.

Q. Were you leaving from your work or going to your work at the time you and the others received the literature there?

A. We were leaving from our work.

Q. On those occasions, were you riding with five or six other men or were you riding with the two other men?

A. Five or six other men.

MR. FISHER: That is all, thank you.

MR. RHEA: I want to move at this time to strike out the testimony with reference to the passing of literature, as none of it is relative to any issue in this case that I (607) am aware of.

MR. FISHER: Did I say union literature or not?

MR. RHEA: I think you said literature.

MR. FISHER: I believe I said "union" one time.

TRIAL EXAMINER MARTIN: Did you understand he was talking about union literature in your answers?

THE WITNESS: Yes, sir.

TRIAL EXAMINER MARTIN: I will let the testimony stand.

* * * * *

(721) C. H. BEARD,

a witness called by and on behalf of the Respondent, being first (722) duly sworn, was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name, please.

THE WITNESS: C. H. Beard, or Charlie Beard, 1001 North Main.

* * * * *

(735) CROSS EXAMINATION

* * * * *

(747) Q. Now, Mr. Haubner, you said, I believe, moved down to the gravel after Mr. Williams asked you to do so; is that right?

A. When Mr. Williams asked him to get off the property, he looked down and asked where the line was and started to move back, as I remember.

Q. Did he reach the gravel?

(748) A. I don't remember whether he reached the gravel or not. He just moved a step or two backward.

Q. When you say "backward," do you mean he might have moved north or east?

A. It was east toward the highway.

Q. Toward the highway?

A. Yes, sir.

Q. Do you know of your knowledge whether he moved off of the company property at that time?

A. No, sir, I sure don't. I don't know where the line is.

Q. You don't know where the line is?

A. No, sir.

Q. If I were to show you the line on the map which we have been using here, can you tell me whether Mr. Haubner was inside of the company property or outside?

A. I would be afraid to say because I don't know whether I could tell you or not.

Q. I see.

A. But I am sure that he was close to the line when he stepped back east.

Q. All right.

A. That would be my judgment.

Q. Mr. Haubner didn't move in any other direction except east; is that right?

A. No, sir.

(749) Q. What was Mr. Haubner doing; did you watch him?

A. He was handing out circulars.

Q. What was he doing with the circulars, was he holding them out like this?

A. He was just handing them as the cars came by.

Q. Did the drivers reach out of the cars and get the circulars?

A. Some of them did.

Q. You saw some of them reach out and get it?

A. Yes, sir.

Q. After Mr. Williams walked up to the drive, did you see any drivers reach out and get the circulars?

A. I don't remember whether they did or not.

Q. You don't have any recollection about that?

A. I remember seeing some boys in the cars get them as they would go by.

Q. Before or after Mr. Williams came down?

A. That was after, I imagine.

Q. Let's don't imagine. Did you see them after he came down or not?

A. I wouldn't say.

Q. On how many occasions did you observe union literature being passed out?

A. Twice.

* * * * *

(797)

HENRY GRADY WILSON

resumed the stand and testified as follows:

TRIAL EXAMINER MARTIN: Mr. Wilson, you are still under oath. We are sorry we kept you waiting so long.

MR. FISHER: Except Mr. Wilson has given his testimony by affirmation.

DIRECT EXAMINATION (continued)

* * * * *

(805) Q. Where was the man that you referred to as being on the other side of the driveway from Mr. Williams and the man that was with him?

A. Well, there was more than one person.

Q. How many were there distributing literature?

A. Two.

Q. Two?

A. Probably with some handbills in their hands of some kind.

Q. Where were those men with handbills?

A. They were back on the edge of the highway up on the blacktop or concrete, whatever it is.

* * * * *

(812) Q. (Mr. Fisher) Mr. Wilson, has he has not any representative of the United Steel Workers of America called upon you at your home and discussed the union with you?

MR. RHEA: If the Examiner please, I object to that question for a variety of reasons. I thought we covered that territory about the first or second day of the hearing where identities of such kind were excluded from this record.

TRIAL EXAMINER MARTIN: Objection is sustained.
(813) MR. FISHER: The respondent makes an offer of proof in connection with the testimony of this witness that union representatives have on more than one occasion called on this witness at his home.

MR. RHEA: Objected to for the same reason.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, please state whether or not at places other than the entrance to the Babcock & Wilcox plant union representatives have communicated with you during the time that you have been employed at Babcock & Wilcox Company's plant?

MR. RHEA: Objected to for the same reason and for the further ground that it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

MR. FISHER: And we make the same offer of proof that on more than one occasion they have talked to this witness.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, did or did not you seek the union representatives on the occasions that you saw them or did they come to you to talk to you?

MR. RHEA: If the Examiner please, the question assumes a statement of facts not in the record and I further object to it because it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

(813) MR. FISHER: The respondent makes an offer of proof in connection with the testimony of this witness that union representatives have on more than one occasion called on this witness at his home.

MR. RHEA: Objected to for the same reason.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, please state whether or not at places other than the entrance to the Babcock & Wilcox plant union representatives have communicated with you during the time that you have been employed at Babcock & Wilcox Company's plant?

MR. RHEA: Objected to for the same reason and for the further ground that it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

MR. FISHER: And we make the same offer of proof that on more than one occasion they have talked to this witness.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, did or did not you seek the union representatives on the occasions that you saw them or did they come to you to talk to you?

MR. RHEA: If the Examiner please, the question assumes a statement of facts not in the record and I further object to it because it is wholly immaterial.

TRIAL EXAMINER MARTIN: Objection sustained.

MR. FISHER: On which ground, or is it sustained on both grounds, please? I do want to change the form of the question if (814) the form of the question has anything to do with it.

TRIAL EXAMINER MARTIN: Both grounds.

MR. FISHER: All right, it will be necessary to restate the question then.

Q. (By Mr. Fisher) Mr. Wilson, did you or did you not on any occasion look up a representative of the United Steel Workers or seek an opportunity to talk to a representative of the United Steel Workers?

MR. RHEA: We object to that.

TRIAL EXAMINER MARTIN: Sustained.

MR. FISHER: And I wish to make an offer of proof on the part of respondent that the witness did not look up the union representative or any union representative to talk to him.

MR. RHEA: We object to the offer.

TRIAL EXAMINER MARTIN: The offer is rejected.

Q. (By Mr. Fisher) Mr. Wilson, did or did not the union representative or union representatives on occasion or occasions come to you and discuss union with you?

MR. RHEA: We object; same reason.

TRIAL EXAMINER MARTIN: Sustained.

MR. FISHER: The offer of proof is that they did.

TRIAL EXAMINER MARTIN: Your offer is rejected.

* * * * *

(820)

LONNIE PARSONS

was called as a witness by and on behalf of the respondent, having been first duly sworn was examined and testified as follows:

TRIAL EXAMINER MARTIN: Give us your name, please.

THE WITNESS: Lonnie Parsons, Sumner, Route 2.

DIRECT EXAMINATION

* * * * *

(829) MR. FISHER: This witness will testify that the union communicated with him outside of the plant property and in the public highway by placing a union handbill in his car.

TRIAL EXAMINER MARTIN: Let me ask you this, there has already been testimony that many employees accepted union literature from the union representatives. Now, how do we add to the record by having men take the stand and saying, "I was one of the people who received union literature," how does that add anything to the record?

* * * * *

TRIAL EXAMINER MARTIN: Well, there is testimony here, Mr. Fisher, that on one occasion, it seems to me, there was a figure (830) given, some 300, I find in my notes here, on June 15, on cross examination of Haubner where you brought out the fact that 300 or more pieces of literature were passed out on June 15, now, do you want me to sit here and listen to each of the 300 men testify they are one of the people who received it? How does that add anything to your record? You already have in the record on cross examination that 300 pieces of literature were passed out.

* * * * *

DIRECT EXAMINATION (continued)

Q. (By Mr. Fisher) Mr. Parsons, the Examiner has determined that you should not answer the questions that we

hoped to be able to propound to you with reference to receiving union literature; and, therefore there is no question.

(835) MR. FISHER: Now, the Examiner will remember the statement made with reference to the other witness, not Mr. Parsons, but respondent has numerous witnesses who collectively will testify to having been called upon by union representatives at their homes for the purpose of discussing the union and for the purpose of interesting them, the employees, in the union; that union representatives and the union have communicated with them at different times during the period that work has been going on at the Babcock & Wilcox Company plant in Paris through mail and by letters written to solicit their interest in the union and that union representatives have approached them on the street and talked to them soliciting their interest in the union, all of which is offered for the purpose of showing communications between the employees and the union and the direct communication by the union with the employees generally through these different means, being understood that the same witness would not testify to all of the facts, necessarily. Some witnesses will testify to letters and some to telephone calls from union representatives, some of those same ones to calls being made on them to their homes, and some to only one of the three means.

Now, I hope I have made that plain for the record, because the Examiner has indicated that he would not permit such proof and it does seem senseless for me to have these

witnesses come up here and have them brought in and have them sworn and ask them their name and address and ask them one question and then let the (836) Examiner tell me again that I have brought a witness up here to prove something that he told me I shouldn't and dress me down, so to speak.

TRIAL EXAMINER MARTIN: Mr. Rhea, isn't it possible to have a stipulation along the lines that Mr. Fisher has just mentioned, without mentioning any names?

MR. RHEA: Yes, I think it is. I want to say I don't think it is material at all, but I will join him in a stipulation based on his own statement that contacts were made at homes, by mail, by letter and on the street at numerous times.

MR. FISHER: By telephone?

MR. RHEA: Numerous times between union people and employees of the respondent.

MR. FISHER: Now, does that "union people"—I just don't know these words, "union representatives" is what I am talking about.

MR. RHEA: We will use the word "representative" if you want it.

TRIAL EXAMINER MARTIN: Now, I just want the record to have adequate stipulation. As I understand it,

Mr. Rhea is agreeing substantially with what Mr. Fisher said?

MR. RHEA: That is right, that if he called witnesses, they would so testify if presented here.

MR. FISHER: Well, in addition to that, you are stipulating that as a fact?

MR. RHEA: In addition I will stipulate that as a fact, both ways.

* * * * *

(843)

LOUIS B. WILLIAMS

called as a witness by and on behalf of the respondent, having been first duly sworn, was examined and testified as follows:

* * * * *

(919) FURTHER REDIRECT EXAMINATION

Q. (By Mr. McLaughlin)

* * * * *

(920) Q. From the Driveway 1, where you enter the driveway, Mr. Williams, and how far is it to the north before there is a lateral road at which an individual can turn off of Farm to Market Highway 137, do you know?

A. How far it is?

Q. Your best estimate, yes.

A. Well, it is Washington Street, and I would say a mile or three-quarters of a mile, or something, I don't know anything about distances.

Q. And I will ask you also how far that distance is from your north boundary line; that is, where the company property ceases until you reach the first lateral road where you can turn off of that Farm to Market Road?

A. Gee, well, let's see, if it is a mile from here to around over there, well, I would say it is three-quarters of a mile from (921) there on over to Washington Street.

Q. Well, is that your best estimate, the three-quarters of a mile from there is what I am trying to get at?

A. That is my best estimate. I have no idea about how accurate it is. I have never measured it and I have had no occasion to know.

Q. Now, do you know where the next lateral road—where the first lateral road to the south is after you leave the company property?

A. I don't recall one anywhere in the vicinity.

Q. You are talking about a road that would cross this one, where a person traveling in an automobile could turn off of Farm to Market Highway 137?

A. I don't recall one until you get on down the road, maybe a couple or three miles.

Q. And that is a couple or three miles South of the Babcock & Wilcox Company?

A. That is right.

* * * * *

(122) EXAMINATION BY TRIAL EXAMINER
MARTIN

(929) Q. You have answered my question. I do have one more. I thought I wouldn't, but I want to ask one more question. You started to say, and I sort of cut you off a few minutes ago, something about the sheriff, I believe it was the sheriff or the Highway Patrolman patrolling the general area in front of the plant at various times.

(930) A. Yes, the Highway Patrol does that.

Q. Now, I take it from your testimony that the Highway Patrol increased the patrol of that area?

A. No, I would not say that.

Q. What is your testimony?

A. My testimony is that the Highway Patrol from the early days of when we, as our employees increased in numbers and they started, why, they set up the patrol, not regularly, but it was on a periodic basis, several times a week, but never on the same day and they did that so they could get those boys not to speed as they left and not to be violating the traffic laws, and a lot of the fellows have got tickets for it, and as I say, I haven't seen them there at 4:00 o'clock in the morning but I know of the boys that have got tickets, some of them, at that time of morning.

Q. What for, speeding?

A. Some for speeding, and some for getting out of the traffic improperly.

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No. 250

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In the
Supreme Court of the United States
OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE BABCOCK & WILCOX COMPANY,

Respondent.

*On Petition for a Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit*

BRIEF FOR RESPONDENT IN OPPOSITION

O. B. FISHER,
Liberty National Bank
Building,
Paris, Texas,

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is "Appendix A" of the petition and is reported at 22 F. 2d 316. The findings of fact, conclusions of law, and order of The National Labor Relations Board are reported at 109 N. L. R. B. 485 and appear in the record heretofore filed by Petitioner. (R. 50-82)¹. The order of the Board is attached hereto as "Appendix A."

1. "R" refers to the transcript of record; BA to the Appendix to the Board's brief in the Court of Appeals and RA to the Appendix to respondent's brief in the Court of Appeals.

JURISDICTION

Jurisdictional requisites are stated in the petition. However, Respondent now suggests that the question presented by the petition is not the question determined in this case by the Board and United States Court of Appeals for the Fifth Circuit.

QUESTIONS PRESENTED

1. Whether an employer violates Section 8(a) (1) of the National Labor Relations Act by non-discriminatory prohibiting non-employee union organizers from distributing union literature on its plant parking lot and alongside its private walkways and driveways under an existing non-discriminatory rule against distribution of literature on its premises.

2. Whether The National Labor Relations Board can in the broad language of Sections 7 and 8(a) (1) of the National Labor Relations Act restrain an employer from engaging in any conduct like or related to the one isolated act found to constitute an unfair labor practice.

STATEMENT

The statement of Petitioner at pages 3, 4, and 5 of the petition is adopted by Respondent as an incomplete statement of the facts. Additionally, the facts are:

(1) There are several state highway signs along the highway as it passes Respondent's premises including "No Parking" signs, one "Speed Limit 60 miles per hour," one

"Curve 30 miles per hour," one "R. R. Crossing" and one "Curve 40 MPH." (R. 68.)

(2) About sixty per cent of the employees at Respondent's plant have telephones, of which about ninety per cent are on the Paris telephone exchange. (R. 68.)

(3) The estimated sixty per cent of Respondent's employees who do not live in Paris live an average of ten to twelve miles from the plant. When coming into Respondent's driveway, most employees come from the direction of Paris and when leaving head in the direction of Paris, North from the plant. From Respondent's drive going North, it is about three-quarters of a mile to the first cross road and on the South, the first cross road is about 2 or 3 miles. (R. 68.)

(4) On three occasions the Union has distributed union literature to Respondent's employees at the point where the driveway meets the right-of-way. On June 15, at the change of shifts in the afternoon, union representatives distributed about 300 pieces of literature as some 325 employees were driving in and out of the driveway. On June 30, they distributed at least 195 pieces as 250 employees were driving out. On July 13, they passed out over 225 pieces as 250 employees were leaving work. (R. 69.)

(5) Other union contacts with employees. In addition to distributing literature to some of the employees, as shown above, during the period of concern the Union has had other contacts with some of the employees. It has com-

municated with over 100 employees of Respondent on three different occasions by sending literature to them through the mails. Union representatives have communicated with many of Respondent's employees by talking with them on the streets of Paris, by driving to their homes and talking with them there, and by talking with them over the telephone. All of these contacts have been for the purpose of soliciting the adherence and membership of the employees in the Union. (R. 71-72.)

(6) The order of the Board is as shown by Appendix B and also appears in Appendix A of the petition, page 16. The Board's order required that Respondent cease and desist from prohibiting the distribution of union literature by union representatives on its premises, subject only to the imposition by Respondent of reasonable and non-discriminatory regulations in the interest of plant efficiency and discipline, but not so as to deny access to union representatives for the purpose of effecting such distribution; and from engaging in any like or related acts or conduct which interferes with, restrains or coerces its employees in the exercise of their right to self organization * * *. (R. 53-54.)

The United States Court of Appeals for the Fifth Circuit denied enforcement of the Board's order for the reasons stated in the opinion and did not deal with the secondary proposition that the order was too broad, page 17 of the petition.

ARGUMENT

It is not intended by Respondent to take the position that a determination by this Honorable Court of questions related to that presented by the petition would not be of importance and of great value to the public generally but it is felt that such question is narrow, and so limited in its comprehension that consideration by this Court at this time is neither required nor justified. The position is that consideration of the mere question presented would place an undue burden on the Court. Admittedly, the determination would be interesting. The question which involves only distribution of union literature during the "employees' free time" is new to this case. The order of the Board does not mention "employees' free time." It deals with distribution of Union literature on Respondent's premises by Union representatives, not employees, subject to reasonable and non-discriminatory regulations imposed by Respondent in the interest of plant efficiency and discipline, but not as to deny access to Union representatives for the purpose of effecting such distribution. Such question was not determined by the Court of Appeals, which dealt with the order made by the Board and only such order.

Counsel for Respondent is not aware of the existence of any conflict in decisions on the question presented by the petition for writ of certiorari and is not aware of any decision of this Supreme Court or of any decision of any United States Court of Appeals squarely and irreconcilably in conflict with the decision of the United States Court of Appeals for the Fifth Circuit in this case. The primary

question in this case is plainly stated in the Court of Appeals' opinion by Chief Judge Hutcheson in these words:

"This question is whether, on a record devoid of proof that any employees were disciplined or in any manner discriminatorily dealt with by the respondent, or were or desired to be members of the union, or were in any way connected with or interested in the distribution by the union representatives of its literature, the board had authority to require the respondent to institute in favor of non-employee union organizers, complete strangers to it and to its employees, a discriminatory non-enforcement of its non-distribution rule, which the proof showed and examiner and board found had always and uniformly been enforced in a completely non-discriminatory way."

The thought is entertained that the National Relations Board should not for its assistance in the administration of the National Labor Relations Act petition the Supreme Court to grant writ of certiorari for determination of a question not first directly and expressly determined by a United States Court of Appeals. The Board should follow the Court decisions, applying the decisions respectively to sets of facts like and similar to the facts involved in each decision until such time as an irreconcilable conflict exists. Then, if ever the conflict in decisions occurs, not a new and different question, but the identical question passed upon by different courts should be presented to this Court.

It is not believed a conflict in decisions of this character exists at this time.

THERE IS NO REAL CONFLICT OF DECISIONS

There is no real conflict between the decisions of the Court of Appeals for the Fifth Circuit in this case and any decision of this Honorable Supreme Court or any United States Court of Appeals. Some of the decisions cited by petitioner are in strict accord with the decision of the Court of Appeals for the Fifth Circuit denying enforcement of the Board's order in this case and neither of the decisions is squarely and directly in conflict with the Court of Appeals' decision herein on the questions of law and the facts involved.

In each of the Fourth Circuit cases of *National Labor Relations Board v. Caldicell Furniture Company*, 199 F. 2d 267, certiorari denied 345 U.S. 907, and *National Labor Relations Board v. Carolina Mills, Inc.*, 190 F. 2d 675, 676, cited as being in conflict with the decision in this case, neither of the brief per curiam opinions states whether or not the persons prohibited from making the distribution of literature were employees. It is apparent that the question of the individuals involved not being employees was not raised and the court did not pass upon such question in either case.

The only other decision cited by Petitioner as being in conflict with the opinion of the Court of Appeals in this case is that of the Sixth Circuit Court of Appeals in *National Labor Relations Board v. Ranco, Inc.* F. 2d enforcing order of Board reported in 109 N. L. R. B. 998.

Respondent is informed that motion for rehearing has been denied in that case, mandate issued and then recalled by order of the Court pending the filing of a petition for writ of certiorari in this Supreme Court. However, the *Ranco* case is distinguishable from this case on its facts. While the decision of the Circuit Court of Appeals does not give the facts in detail, the decision of the National Labor Relations Board reveals that the employer therein did not have a rule prohibiting all distribution of union literature upon its premises. *Raíco, Inc.* permitted distribution of union literature by its employees which resulted in there being one group of employees distributing pro-union literature and another group of employees distributing anti-union literature upon the employer's premises. The employer engaged in assisting the group distributing the anti-union literature by defraying the cost of printing such literature. In the face of these facts, the employees being obviously interested in the union organizational effort and distribution of union literature, the employer refused to permit non-employee union organizers to distribute union literature on its premises. Contrarily in this case now before the Court, as stated in the opinion of the Circuit Court of Appeals, the record is devoid of any proof that any of the Babcock & Wilcox Company employees were or desired to be members of the union or were in any way connected with or interested in the distribution by the union representatives of its literature. Further, the record is conclusive that no literature, pro-union, anti-union or otherwise, was permitted by Respondent to be distributed on its premises.

Petitioner does not directly contend but suggests by inference that the decision of the Court of Appeals for the Fifth Circuit in this case is in conflict with the decision of this Honorable Court in the case of *National Labor Relations Board v. LeTourneau Company*, 324 U. S. 793. The Court of Appeals in opinion by Chief Judge Hutcheson discusses and recognizes the *LeTourneau* decision. Mr. Justice Reed, who for the Court wrote the decision in the *LeTourneau* case, in his dissenting opinion in the case of *National Labor Relations Board v. Stowe*, 336 U. S. 226, said:

"It is only when there is a violation through an interference with or a restraining or coercion of employees' rights under Section 7 that an unfair labor practice finding may be predicated on the employer's acts. The employer is not required to aid employees to organize. The law forbids only interference.

* * * * *

"It has never been held that where the employees do not live on the premises of their employer a union organizer has to be admitted to those premises."

The dissenting opinion by Mr. Justice Reed was written after the decision in the *LeTourneau* case and certainly we should understand that he used the language quoted with a full and correct knowledge of the meaning and effect of the *LeTourneau* decision and how it was intended by the Supreme Court to be interpreted and applied.

Respondent respectfully submits that the decision of the Court of Appeals for the Fifth Circuit is not in conflict

with the decision of the Supreme Court in the *LeTourneau* case but is in accord therewith.

II.

THE DECISION IS CORRECT

The decision of the Court of Appeals for the Fifth Circuit is clearly correct. Two other Courts of Appeals have recently passed upon the question involved in this decision, the Court of Appeals for the Tenth Circuit in the case of *National Labor Relations Board v. Seamprufe, Inc.*,

F. 2d (Decided May 4, 1955) and the Court of Appeals for the Ninth Circuit in the case of *National Labor Relations Board v. Monsanto Chemical Company*, *F. 2d* (Decided July 27, 1955). These Courts came to the same conclusion as the Court of Appeals for the Fifth Circuit in this case and denied enforcement of an order of the National Labor Relations Board requiring an employer to permit outside union organizers to distribute union literature upon the employer's premises, where such employer had a non-discriminatorily adopted and non-discriminatorily enforced rule prohibiting such distribution.

The Fifth Amendment to the Constitution of the United States expressly provides that one shall not be deprived of his property without due process of law. This provision of the Constitution was recognized and adhered to by the Seventh Circuit Court of Appeals in the case of *Marshall Field & Company v. National Labor Relations Board*, 200 *F. 2d* 375. In that case outside union organizers were attempting to gain access to the employer's premises for the

distribution of union literature to the employees. Enforcement of the order of the National Labor Relations Board requiring the employer to permit the union organizers to distribute union literature on the employer's premises was denied. The *Marshall Field & Company* case was decided subsequent to the *Le Tourneau* case (*supra*) and the Court of Appeals for the Seventh Circuit therein distinguished the *Le Tourneau* case, as has the Court of Appeals for the Fifth Circuit in this case, by stating that the *Le Tourneau* case involved union organizers who were employees and that such organizers had been discharged by the employer for violation of a no-distribution rule. It follows that the opinion in the *Marshall Field & Company* case supports the decision of the Court of Appeals for the Fifth Circuit herein, notwithstanding the position of Petitioner to the contrary.

The opinion of the Fifth Circuit Court of Appeals herein is also supported by the decisions in the cases of *National Labor Relations Board v. Mooresville Mills*, 204 F. 2d 87 and *Newport News Childrens' Dress Company, Inc.*, 91 N. L. R. B. 1521. In each of these cases it was held that a no distribution rule does not violate the act where it does not appear that such rule constitutes a serious impediment to self organization. The evidence is clear herein that Respondent's no distribution rule did not and does not constitute a serious impediment to self organization of its employees. It was admitted that the union successfully distributed its literature to Respondent's employees on at least three occasions. (R. 69.) It was also admitted that the

union successfully communicated with a substantial number of Respondent's employees by sending literature to them through the mails, by talking with them on the streets of Paris, by talking with them at their homes and by talking to them by telephone. (R. 71-72.) All of Respondent's employees live within a 30 mile radius of Respondent's plant and most of them live within a 10 mile radius of the plant. There are many avenues of communication between the union representatives and Respondent's employees available at all times to the union and the record clearly shows that the union was successful in communicating with such employees through each channel of communication which it attempted to use. As stated by Mr. Justice Reed in his dissenting opinion in the *Stowe Spinning* case (*supra*),

"This gives ample opportunity for union membership proliferation."

It follows that the Court of Appeals for the Fifth Circuit properly decided the questions presented in this case.

III.

INADEQUACY OF ORDER

The order of the Board, couched in the general language of the National Labor Relations Act, is so broad in its scope, vague and uncertain, that Respondent is not apprised with any degree of certainty as to what act or acts are thereby restrained. The vagueness of the order to cease and desist from prohibiting the distribution of union literature by union representatives subject to the imposition

of reasonable and non-discriminatory regulations by Respondent, in the interest of plant efficiency and discipline, but not as to deny access to the union representatives for the purpose of effecting such distribution, is only surpassed by the vagueness and uncertainty of provision (b) thereof ordering Respondent to cease and desist from engaging in any like or related acts or conduct which interferes with, restrains or coerces its employees in the exercise of their right of self organization. *National Labor Relations Board v. Express Publishing Company*, 312 U. S. 426, and *May Department Stores v. National Labor Relations Board*, 326 U. S. 376, require that any cease and desist order must be exact and specific in what it requires and forbids. This order does not so do.

CONCLUSION

Respondent respectfully urges that the petition for writ of certiorari be denied for the reasons stated; and prays alternatively, and in the event the writ is granted, that this Honorable Supreme Court summarily affirm the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

O. B. FISHER,
Liberty National Bank
Building,
Paris, Texas,
Counsel for Respondent.

September 1, 1955.

CERTIFICATE

The undersigned Counsel for Respondent certifies that five copies of the foregoing brief were deposited in a United States Post Office with air mail postage prepaid to each Hon. Simon E. Sobeloff, Solicitor General, Department of Justice, Washington 25, D. C., and David P. Findling, Esq., Associate General Counsel, National Labor Relations Board, Washington 25, D. C., this September 2nd, 1953.

APPENDIX A**ORDER**

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Babcock and Wilcox Company, Paris, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Prohibiting the distribution of union literature by union representatives on its parking lot and alongside the walkways from the gatehouse to the parking lot and the drive, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization

as a condition of employment, as authorized in Section 8 (a) (3) of the act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Rescind immediately its rule prohibiting the distribution of union literature by union representatives on its parking lot at its Paris, Texas, plant, and alongside the walkways from the gatehouse to the parking lot and the drive.

(b) Post at its plant at Paris, Texas, copies of the notice attached hereto as an appendix. 6 Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent or its representatives, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material. (R. 53-54.)

(c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

6. In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION

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In the
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No. 250

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*On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit*

**BRIEF FOR RESPONDENT, THE BABCOCK &
WILCOX COMPANY**

O. B. FISHER,
Liberty National Bank Bldg.,
Paris, Texas,
Attorney for Respondent.

December, 1955.

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In the
Supreme Court of the United States
OCTOBER TERM, 1955

No. 250

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

THE BABCOCK & WILCOX COMPANY,

Respondent.

*On Writ of Certiorari to the United States Court of
Appeals for the Fifth Circuit*

**BRIEF FOR RESPONDENT, THE BABCOCK &
WILCOX COMPANY**

I.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 222 F. 2d 316. The findings of fact, conclusions of law and order of the National Labor Relations Board are reported at 109 N. L. R. B. 485 and appear in the record herein filed. (R. 50-82.) The order of the Board is attached as "Appendix A," infra pp. 49-50.

II.

JURISDICTION

Jurisdictional requisites are stated in Petitioner's brief. However, Respondent suggests that the questions presented by the Petitioner are not the questions determined in this case by the Board and the United States Court of Appeals for the Fifth Circuit.

III.

QUESTIONS PRESENTED

1. Whether the Respondent violated Section 8(a)(1) of the National Labor Relations Act by non-discriminately enforcing against non-employee union organizers its rule against strangers entering upon its private property to distribute literature?

2. Whether the National Labor Relations Board can ~~order~~ an employer to cease and desist from an action subject to reasonable regulations, without defining "reasonable regulations," and then in the broad language of Section 7 and 8(a)(1) of the National Labor Relations Act, restrain an employer from engaging in any conduct like or related to the one isolated act found to constitute an unfair labor practice?

IV.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, et seq.), and the text of the *Fifth Amendment to the United States*

Constitution are set forth in "Appendix B" (infra), pp. 51-53.

V. STATEMENT

A.

The Facts

The Respondent, a manufacturer of boilers and other allied products, has a plant at Paris, Texas, which is a part of its Boiler Manufacturing Division. The United Steelworkers of America, C. I. O., hereinafter called "Union," filed a charge against Respondent involving its Paris plant and the National Labor Relations Board issued a complaint on such charge. The complaint alleged that Respondent had engaged in various unfair labor practices, about 15 in number, one of which being that it had denied the union access to its property for the purpose of soliciting union adherence or membership. (R. 12-21.) After a hearing, the Board found that there was no merit to any of the allegations contained in the complaint other than that which alleged that Respondent had denied the union access to its property for the purpose of soliciting union adherence or membership. (R. 18.) As a result, all the allegations of unfair labor practices made against Respondent were dismissed, save and except only the allegation that Respondent had denied non-employee union organizers access to its property, which Respondent admitted. The Board found that such denial by Respondent constituted a violation of the Act.

The Paris plant is located about 1 mile from the city limits of Paris, Texas, which town has a population of about 21,000 people. (R. 66.) At this location, Respondent owns about 100 acres of land situated on the West side of a Farm to Market Road, the right of way of which is 80 feet wide with a paved portion of 18 feet, leaving 31 feet on each side unpaved and unused.

About 40% of Respondent's approximately 500 employees live in the City of Paris, Texas. 75% of its employees live in Lamar County, Texas. Those employees who live outside the City of Paris, live an average distance of 10 to 12 miles from the Paris plant. (R. 67-68; 215-216.)

About 60% of Respondent's employees have telephones at their homes and about 90% of those phones are on one exchange, that being the Paris telephone exchange. (R. 214-215.)

From the point where Respondent's driveway intersects the Farm to Market Road, it is $\frac{3}{4}$ of a mile to the first cross-roads on the North, and 2 or 3 miles to the first cross-roads on the South. (R. 247-248.) Respondent owns no other property in the entire area, including that across the Farm to Market Road and that along the Farm to Market Road to the North and South of its property. (R. 214-215.)

Respondent began production at its Paris plant in March of 1953 and immediately put into effect a no-distribution rule, barring distribution of literature of all kinds and nature upon its property by all strangers to the plant. (R.

189.) It was affirmatively found by the Board that Respondent's rule was non-discriminatorily adopted and non-discriminatorily enforced. (R. 71.)

Respondent's employees are not represented by any labor organization as their bargaining agent and no labor organization has at any time contended that it represented its employees as their bargaining agent. During the summer of 1953, representatives of the union which filed the charge against Respondent made an organizational effort at Respondent's plant, and on three occasions distributed union literature to employees traveling across the vacant unpaved strip between Respondent's property and the paved portion of the road. On June 15, 1953, union organizers distributed 300 pieces of union literature to some 325 employees as they were driving into and out of Respondent's driveway; again on June 30, 1953, they distributed at least 195 pieces of union literature to 250 employees at the same place and on the same strip; and then on July 13, 1953, at the same place off Respondent's property distributed over 225 pieces of union literature to 250 employees as they were leaving work. (R. 69, 245-246.) These three occasions were the only times the union representatives attempted to distribute literature to Respondent's employees in the vicinity of Respondent's plant. (R. 69, 179-181, 185.)

During the summer of 1953 the union representatives mailed literature to approximately 100 of Respondent's employees on each of three different occasions. (R. 71-72.)

During this same time, the union representatives com-

municated with many of Respondent's employees by talking with them on the streets of Paris, by driving to their homes and talking with them there, and by talking with them over the telephone, all for the purpose of soliciting their adherence and membership in the union. (R. 71-72.)

The record is silent on any attempt by the union to communicate with Respondent's employees through the use of newspapers, radio, civic organizations, public meeting places, outdoor billboards, and other services and facilities afforded by a town the size of Paris, Texas, and the area in which the employees resided.

Nevertheless, on October 28, 1954, the union wrote Respondent requesting permission for its representatives to distribute union information in leaflet form to Respondent's employees on Respondent's parking lot or on its plant property. (R. 219-220.)

Respondent denied this request as it had denied previous similar requests by all other strangers such as local commercial establishments, civic organizations, lodges and churches. (R. 185, 215.)

B.

The Board's Conclusions and Order

The statement of the Petitioner with respect to the Board's conclusions and order are misleading. In actuality, the Board gives to non-employee union organizers the same rights and privileges to use an employer's property for the purpose of distributing union literature that employees

are accorded. The Board achieves this by concluding that non-employee union organizers have a right to distribute union literature on an employer's parking lot, driveways and walkways, though the union does not represent the employees as their bargaining agent. This conclusion of the Board is premised only by the finding that the right of way between the "blacktop" and Respondent's drive is neither a safe nor a practicable place for the union organizers to distribute their literature (R. 75), and the further conclusion that the non-employee union organizers could not "readily" distribute their literature away from Respondent's premises (R. 75).

After reaching the above conclusion, the Board entered an order requiring Respondent to cease and desist from prohibiting distribution of union literature on its parking lot, walkways and drive, subject to reasonable regulations that Respondent may impose. The order further, in the language of the National Labor Relations Act (hereinafter referred to as the Act), requires Respondent to cease and desist from engaging in any like or related acts. (R. 53-54.)

C.

The Decision of the Court Below

The Petitioner sets forth a brief analysis of the decision of the court below, which is substantially correct. However, the court below clearly recognized the question which was

and is involved in this case and stated it precisely in the following language:

"This question is, whether on a record devoid of proof that any employees were disciplined or in any manner discriminatorily dealt with by the respondent, or were or desired to be members of the union, or were in any way connected with or interested in the distribution by the union representatives of its literature, the Board had authority to require the Respondent to institute in favor of non-employee union organizers, complete strangers to it and to its employees, a discriminatory non-enforcement of its non-distribution rule, which the proof showed and Examiner and Board found had always and uniformly been enforced in a completely non-discriminatory way." (R. 251.)

VI.

SUMMARY OF ARGUMENT

Petitioner would have this court think that this is a re-argument of the *LeTourneau* case, in which this court held that the Board could properly order an employer, in the absence of any showing by him that to do so would create production and disciplinary problems, to cease and desist from enforcing against his employees a rule prohibiting their distributing union organizational literature on the employer's parking lot. The case now before this court, however, is not the *LeTourneau* case all over again. It is an entirely different case. Here the employer's rule before the Board was a non-discriminatory prohibition against strangers coming on its privately owned property to distribute literature of any kind.

LèTourneau involved the right of employees to distribute literature on the parking lot. As employees they had been licensed to enter the employer's property and use its parking lot and they were given free time on the property which the Act, subject to reasonable rules and regulations, permits them to use for self organizational purposes. There it was perhaps proper to balance against the self-organizational rights of the employees the disciplinary and production problems which might be created if the employees were to pursue this right by the distribution of literature. There too, it is proper that the burden to show production or disciplinary problems shall fairly lay on the employer, who, after all, best knows them.

Here, however, the rule in question is directed not against employees but against strangers. The balance is not between the interests of the licensor and those of the licensee. It is rather between the rights of the property owner and those of the unlicensed stranger. It is improper (here, as the Board has done) to apply the same tests to the right of the stranger as to the right of the licensed employee. This, the Board has done. Rather than the burden being on the property owner to show that disciplinary or production problems would be created if the stranger were allowed on his property, the burden should be on the stranger to show insuperable hardship to the employees' self-organizational rights before he is entitled to break down the property owner's traditional privilege to allow whom he pleases on his property. No insuperable hardship in the distribution of union literature off the employer's premises, or in the exercise of self-organizational rights on

the part of the employees, or to the union assisting the employees in the exercise of their rights, was shown in this case; none exists. If such were true, the union and union representatives, not the employer, would be in a position to and must make proof thereof.

Petitioner has erred in seeking to apply the tests of the *LeTourneau* case to the entirely different case presented when a non-employee seeks to violate a non-discriminatory no-distribution rule. Respondent suggests that the Fifth Circuit in the instant case, the Seventh Circuit in the *Marshall Field* case, the Ninth Circuit in the *Monsanto* case, and the Tenth Circuit in the *Seamprufe* case, have properly held that, before he can break down another's property rights, the stranger must show much more than, as is all the Board has shown here, that it would be more convenient to distribute literature on the employer's premises, than to approach the employees elsewhere.¹ Rather he must show either that the employer has permitted another stranger to distribute literature on his property and is discriminatorily preventing the union organizer from doing so in order to discourage membership in the union, or that, as is the case with an isolated lumber camp or a company town, an insuperable hardship to approaching the employees exists if the organizer is not permitted upon employer property.

¹Petitioner in its statement of the case presented herein terms it "unreasonably difficult" for a union to reach the employees off company property if it is more convenient for the union to reach them on it. This characterization begs the issue presented by this case, viz: Is reaching the employees off company premises here so difficult that the employee's self-organizational rights are prejudiced to the point that the property owner may be required to relax his uniform no distribution rule in favor of a stranger union organizer?

Petitioner has failed to meet this burden, and the order of the court below should therefore be affirmed.²

VII.

ARGUMENT

A.

First Question

The court below properly denied enforcement of the Board's order requiring Respondent to rescind a non-discriminatorily adopted and non-discriminatorily enforced no-distribution rule insofar as it applied to non-employee union organizers who sought to distribute union literature upon Respondent's property, because such order is contrary to law.

1.

Real Purpose of Board's Order

It clearly appears that the real purpose and intent of the order of the Board is to require the employer to furnish non-employee union organizers an arena upon which they can contact and *discuss* with employees the matter of the union representing the employees as their bargaining agent. This real purpose is quite clearly brought out in the Petitioner's brief by the following statement:

"And distribution through the mails, if not equally costly and time consuming, it at any rate a poor substitute for personal contact, *affording no opportunity*

²The denial of enforcement by the Court below should be affirmed for the additional reason that the Board's order is too broad, vague and indefinite to authorize enforcement.

for the distributor to answer the questions which the literature is bound to evoke."* (Petitioner's Brief, page 40.)

This purpose of the order is further illustrated by the argument of the Petitioner to the effect that present day labor unions are increasingly selecting trained and professional organizers, trained at the union's own special schools, such as salesmanship schools, and that the Employer is required to give such professional union organizers every opportunity to contact the employees. (Petitioner's Brief, pp. 29-30.) Thus, the Board, in actuality, is extending the holding in the case of *Bonwit Teller v. National Labor Relations Board*, 197 F. 2d 640 (C. A.-2), which holding was specifically renounced and rejected by the Board in the case of *Livingston Shirt Corporation*, 107 N. L. R. B. 400 (1953), in the following language:

"We believe that the equality of opportunity which the parties have a right to enjoy is that which comes from the lawful use of both the union and the employer of the customary fora and media available to each of them. It is not to be realistically achieved by attempting, as was done in *Bonwit Teller*, to make the facilities of the one available to the other.*"

"It will be seen from our dissenting colleague's recitation of the history of *Bonwit Teller* that it stemmed from the captive audience concept of *Clark Brothers*, 70 N. L. R. B. 802. In that case the majority of the Board found that it was an unfair labor practice for an employer to make a non-coercive speech to employees on its own premises during working hours. This doctrine was short lived. Congress specifically repudiated it, and said so, when it enacted Section 8

*Emphasis added.

(c) of the Act. The concept was not so easily laid to rest for the Board soon devised the *Bonwit Teller* doctrine. This latter case held that, while the speech was protected by 8 (c) an employer who made a privileged speech was guilty of an unfair labor practice if he denied a request by the union to reply on his time and property. It requires little analysis to perceive that *Bonwit Teller* was the discredited Clark Brothers doctrine in scant disguise. It is equally contrary to the statute and congressional purpose.”*

However, in the instant case, the Board seeks to go even beyond the holding in *Bonwit Teller*. Here the employer has not been making anti-union talks, or distributing anti-union literature, as was the employer in *Bonwit Teller*. Respondent agrees that the holding in *Bonwit Teller* was and is contrary to the Act and Congressional purpose and submits that the result here sought to be achieved by the Board, i.e., requiring the employer to furnish the union a forum for its discussions and distribution of literature, when the employer is engaging in no anti-union campaign, is all the more contrary to the Act and Congressional purpose.

2.

Unions Have No Inherent Right to Distribute Union Literature in the Manner Quickest, Most Convenient and Cheapest for Them as Against the Right of Ownership of Property

Throughout Petitioner's brief, the theme is that union organizers have the right to distribute their literature and solicit union membership at the location or locations most

*Emphasis added.

convenient to them, in the quickest manner and with the least expense possible. Where do they get such a right? The Act does not expressly or impliedly give to non-employee organizers such right. The Board, based on a conclusion that the union could not readily distribute its literature off Respondent's premises, gave to its organizers the right to make distribution thereof on Respondent's property, the place most convenient for it.

The first question presented by Petitioner to the court is conditioned upon it being unreasonably difficult for the union to reach the employees off company property *in the immediate vicinity of the plant*. The Board did not find in its decision in this case that it was unreasonably difficult for the union to distribute its literature to the employees off company property as Petitioner now argues. The finding in this connection was merely that the union could not readily distribute its literature off Respondent's premises (R. 75), from which it concluded an unreasonable impediment to self-organization was created. (R. 77.) As hereinafter shown, the only place in the immediate vicinity of the plant that there was any attempt made to reach Respondent's employees by the union was on a strip of public right of way, 31 feet in width, between Respondent's property and the highway at the point where Respondent's driveway intersects the highway. Though some difficulty was encountered, the union was successful in reaching Respondent's employees in this manner on each occasion that it tried. There are numerous other places in the immediate vicinity of Respondent's plant at which the

union organizers could contact Respondent's employees which were not used by the union organizers.

Even if we are to concede that the immediate vicinity of the plant is the most convenient place for distribution of union literature and perhaps the least expensive, the Act does not give to the non-employee union organizer the inherent right to do his solicitation at the place most convenient to him, particularly at the sacrifice of the property rights of others. The Petitioner's argument, at page 11 of its brief, that the union cannot convey information to employees unless it has access to the employees in the immediate vicinity of the plant, is completely fallacious. Respondent is surprised at Petitioner advancing such an argument with all of the means, devices and methods of communication that we have and which were at the union's disposal here, had it desired to use them. As is hereinafter shown, and is as in effect conceded at page 40 of Petitioner's brief, the union had and has ample means of communication with Respondent's employees. The union naturally desires to effect this communication in the manner most convenient and cheapest to it but it has no such right. Particularly so, when the rights of others are to be thereby sacrificed.

Respondent recognizes that employees are entitled to freedom in receiving advice and information from others concerning their rights under the Act. However, this does not give to the union organizers, in a situation such as we have here, the right to exact a servitude upon the employ-

er's property whereby the employer is required to permit the union organizer to go on his property and there find the employees, as a captive audience, and force literature upon them irrespective of whether or not they wished to be bothered with the literature. Such a requirement would in effect abridge that portion of the Act which specifically gives to the employees the right to refrain from any and all union activity if they so desire.

If we are to face realities, we must face the fact that labor unions in this United States are big business with substantial wealth at their control. Where do the representatives of this business get the right to use another's property in the furtherance of their efforts solely because it will be easier, cheaper and more convenient for them, as contended by Petitioner? Surely the employer is not called on to furnish a forum for the union organizer, in order to make his job easier, quicker and cheaper for him. An employer is not required to aid employees to organize but only not to interfere. *N. L. R. B. v. Stowe Spinning Company*, 336 U. S. 226, 241.

On the conclusion that there was a safe and practicable place on Respondent's property, that is, its parking lot and alongside its walkways and drive, at which union literature could be distributed (R. 76), coupled alone with the conclusion that such places were the most convenient places for the union to distribute its literature or, in the language of the Board, that distribution of literature could not readily be conducted away from Respondent's premises (R. 75), Petitioner contends that such gives to the union the

right to there distribute its literature, notwithstanding that such places are the private property of Respondent.

The magnitude of the right to own and control property has always been recognized and jealously guarded by our courts as a necessary part of liberty and freedom. The right has never been lightly dealt with. It is of such importance to our society and democracy that it is protected and guaranteed by the *Fifth Amendment to the Constitution of the United States*. Admittedly, the exercise of the elements of enjoyment and ownership of property are subject to government regulation to the extent that the exercise of an equally valuable and important right by another shall not be denied to him. However, in each instance that our courts have found it necessary to make some dislocation of property rights in favor of strangers, it was only when the stranger had encountered an insuperable and unsurpassable hardship or difficulty in exercising some Constitutional right, for example, his freedom of communication with others. Among the cases discussing this "dislocation" of property rights are those of *N. L. R. B. v. Stowe Spinning Company*, 336 U. S. 226; *Marsh v. Alabama*, 326 U. S. 501, and *N. L. R. B. v. Lake Superior Lumber Corporation*, 167 F. 2d 147 (C. A.-6). While there was actually no dislocation of a property right in the *Stowe Spinning Company case*, inasmuch as the employer in that case had already given up the right to control who would use the property involved, by leasing it to another, this Court suggested that a dislocation of the property right might be in order because the employer was clearly discriminating against the

union involved. In the *Lake Superior Lumber Corporation* case, the distributor of literature encountered insuperable difficulty in distributing literature because the distribution was being prohibited in a company owned lumber camp where employees not only worked, but lived and maintained their homes, which employees had a right to receive the literature being distributed. In the *Marsh* case, there was actually no dislocation of a property right, but in support of the principle of freedom of communication, this court held unconstitutional a statute which prohibited the distribution of literature upon the public streets in the company owned town of Chickasaw, Alabama. There are several cases decided by this court which involve the same principle, among which are the *Schneider v. State of New York*, 308 U. S. 147; *Lovell v. City of Griffin*, 303 U. S. 444; *Martin v. City of Struthers*, 319 U. S. 141; *Jamison v. Texas*, 318 U. S. 413, and *Thomas v. Collins*, 323 U. S. 516, each of which is cited by Petitioner. Respondent does not contend against the principle in those cases, but such decisions do not support the position which Petitioner takes before this court at this time.

It is not necessary for the court to pass on the soundness of the dislocation rule in this case; inasmuch as the order of the Board is clearly incorrect for other reasons. Nevertheless, Congress even if it could constitutionally do so, has at no time shown any intention of destroying property rights secured by the *Fifth Amendment*, in protecting employees' rights of collective bargaining under the Act. Until Congress should evidence such intention by specific

legislative language, our courts should not construe the Act on such dangerous constitutional grounds. The courts should always construe statutes so as to avoid the least risk of constitutional infirmity. *United States v. C. I. O.*, 335 U. S. 106, 120-121; *Kovacs v. Cooper*, 336 U. S. 77, 85. Even if Congress should evidence such intention by specific legislative language, then the dislocation rule, if it has any validity, should only be applied in a very strong case, that is, where insuperable difficulty has been encountered in exercising the rights granted by the Act. No facts here exist to justify its application in any event.

3.

There Has Always Been a Distinction Between Rights of Employees and Non-Employee Organizers

The Board always preserved a distinction between the rights of employee and non-employee organizers until after the decision of this court in the case of *N. L. R. B. v. LeTourneau* (1945), 324 U. S. 793. Since that time the Board has misconstrued the *LeTourneau* case so as to equalize the rights of employee and non-employee union organizers. The *LeTourneau* case does not justify such equalization. The question was not involved in the *LeTourneau* case. The question not being involved, the *LeTourneau* case is not authority for that which Petitioner cites it, nor is it dispositive of the issue here before the court as contended by Petitioner.

The position of the Board on the matter of distribution of union literature on company property by non-employee

union organizers before the decision in the *LeTourneau* case is shown by its decisions in the cases of *North American Aviation, Inc.* (1944), 56 N. L. R. B. 959, and *Tabin Picker Company* (1943), 50 N. L. R. B. 928.

In the *North American Aviation* case the Board stated:

"Rule prohibiting distribution of literature or written or printed matter of any description on company premises is not violative of N. L. R. A.; promulgation of such rule by employer does not constitute interference where it is not shown that the rule has been discriminatorily enforced."

In the case of *Tabin Picker Company* the Board stated:

"Discharge of most active union members for distributing union handbills in plant announcing an open union meeting was not discriminatory inasmuch as, in the interest of keeping plant clean and orderly, it is not unreasonable for an employer to prohibit distribution of literature on plant premises at all times and such restrictions had not been discriminatorily enforced."

After this court rendered the decision in *LeTourneau*, 324 U. S. 793 (1945), in which it held that an employer could not prevent employees from distributing union literature on its parking lot under the circumstances as were present in that case, the Board has misconstrued and extended that decision so as to give non-employee union organizers the same rights in this connection as employees. This, the Board has done, notwithstanding the fact that in the decision in the *LeTourneau* case, this court stated that the sole question involved was whether, under the circumstances, the rule of the employer to the extent that it prohibits distribution of union literature by employees

on parking lots, constitutes such a serious impediment that it must give way. When the *LeTourneau* case was before this court, the Board in its brief, at page 29, footnote 17, argued:

"The facts in the instant case do not present, and the Board did not consider the question which would arise if union representatives who were not employed at the plant sought to distribute literature on the parking lots."

Among the cases in which the Board has extended to non-employee union organizers this right, and here relied on by Petitioner, are the cases of *N. L. R. B. v. Carolina Mills, Inc.*, 92 N. L. R. B. 1141, enforced 190 F. 2d 675 (C. A.-4), and *N. L. R. B. v. Caldwell Furniture Company*, 97 N. L. R. B. 1501, enforced 199 F. 2d 267 (C. A.-4).

The *Carolina Mills* case was enforced in a per curiam decision in which no cases are cited by the court enforcing the order. While Respondent respectfully submits that the *LeTourneau* case, if such was the basis of the Fourth Circuit Court's decision therein as here contended by Petitioner, does not support the *Carolina Mills* decision, in any event, the facts in the *Carolina Mills* case are so different from the facts of the instant case that it is not authority for the position of Petitioner herein. In the *Carolina Mills* case there was a discriminatory enforcement of a no-distribution rule, the union involved was the bargaining representative of the employees, there was no other place at which distribution of union literature could be accomplished, the employer was engaging in an anti-union cam-

paign and the employer had a history of unfair labor practices. None of these facts are present in the instant case.

The *Caldwell Furniture Company* case was also decided by the Fourth Circuit Court of Appeals, in a short per curiam decision relying on the *LeTourneau* case and the *Carolina Mills* case. Here again the facts are different and the *Caldwell* case does not support the present position of Petitioner. In the *Caldwell* case, the employer's plant was located immediately adjacent to the highway and there was no area between the company property and the highway where distribution could be made by union organizers, and it was virtually impossible to make distribution off the employer's premises. Here, it has been shown that distribution could be made off Respondent's premises, but the Board in effect says, this being inconvenient for the union, it is not required to resort to such other places to distribute its literature. Also, as pointed out by the Ninth Circuit Court of Appeals in its decision denying enforcement of a Board order similar to the one here involved in the case of *Monsanto Chemical Company*, 225 F. 2d 16, 19, petition for certiorari pending, the question here presented, i.e., the prohibition of the non-employee union organizers from distributing literature on company property, does not appear to have been raised in the *Caldwell* case, for the court makes no mention of it.

Each of the other cases cited by Petitioner, those of *Ranco, Inc.*, 109 N. L. R. B. 998; *Seamprufe, Inc.*, 109 N. L. R. B. 24, and *Monsanto Chemical Company*, 108

N. L. R. B. 1110, as authority for its position here taken, are pending before this court, the first two on writs of certiorari granted and the latter on petition for certiorari pending. The order of the Board wrongfully extending the holding of this court in the *LeTourneau* case was denied enforcement in the *Seamprufe* case (C. A.-10) and the *Monsanto* case (C. A.-9), and ordered enforced in the *Ranco* case (C. A.-6). The findings in the *Ranco* case are not analogous to the findings in the case here presented and such decision of the Sixth Circuit Court of Appeals does not support Petitioner herein. In the *Ranco* case the employer was permitting distribution of union literature on its property and its employees were interested in such distribution. Notwithstanding this distinction, Respondent submits that the decision of the Sixth Circuit Court of Appeals in the *Ranco* case is clearly wrong and is not supported by the decision of this court in the *LeTourneau* case, cited by the Sixth Circuit Court as being authority for the decision.

While Petitioner makes no mention of the case before this court, it relied on the case of *N. L. R. B. v. Monarch Machine Tool Company*, 210 F. 2d 183 (C. A.-6), in the court below. However, the no-distribution rule was there adopted by the employer during the middle of an organizational campaign for the sole purpose of discouraging organization of its employees, and then applied as to distribution of literature by employees. Thus, the *Monarch Machine Tool Company* case is not authority for the position here taken by Petitioner. It is assumed Petitioner

concedes such inasmuch as no reference is made to the *Monarch* case in Petitioner's brief to this Court.

In 1952, the Board made an unwarranted extension of the holding of *LeTourneau* in the case of *Marshal Field & Company v. N. L. R. B.*, 200 F. 2d 375 (C. A.-7). The Seventh Circuit Court of Appeals, in a well reasoned opinion, modified the order of the Board, and refused to enforce that portion of the order which required an employer to permit non-employee union organizers to come upon the employer's premises, except to the extent of permitting the organizers to distribute literature on an alleyway, Holden Court, which partook of the nature of a city street. The Seventh Circuit Court of Appeals therein at 200 F. 2d 381 stated:

"In its decision and in the Board's argument before this court, the Board relies heavily upon the *Republic Aviation Corporation v. N. L. R. B.* and *N. L. R. B. v. LeTourneau Company of Georgia* cases, 324 U. S. 793, 65 Supreme Court 982, 89 Lawyers Edition 1372. It seems advisable therefore to analyze just what the Supreme Court decide din those cases. In the first place the cases involved *only union organizers who were employees of each company respectively.*"

This unwarranted extension of the holding of this court in the *LeTourneau* case by the Board is now, for the first time, reaching the Supreme Court of the United States. There are four cases, the first of which is the instant case, the other three of which are cited above, pending before this Court at this time, which have substantially the same question involved.

*Emphasis added.

The Supreme Court Never Intended for the Holding in the Le Tourneau Case to Apply to Non-Employees

Certainly, this Court did not intend for its decision in the case of *N. L. R. B. v. LeTourneau Company*, 324 U. S. 793, to apply to non-employee union organizers. Mr. Justice Reed was the organ of the Supreme Court in the *LeTourneau* case and certainly he fully understands and appreciates the full import of the Court's opinion therein. Mr. Justice Reed had occasion to discuss the *LeTourneau* decision in the case of *N. L. R. B. v. Stowe Spinning Company*, 336 U. S. 226, (1949). In that case, this Court held that the employer involved had violated the Act by requiring that a fraternal organization, to whom it had leased a company owned hall, cancel a rental agreement for use of the hall by the union. The Court, in so finding, expressly stated that its finding was based solely on the fact of discrimination, in the following language:

"What the Board found, and all we are considering here, is discrimination. The decree should be modified to order Respondent to refrain from any activity which would cause a union's application to be treated on a different basis than those of others similarly situated." 336 U. S. 233.

Even though there was discrimination against the union involved in the *Stowe Spinning* case, Mr. Justice Reed wrote a dissenting opinion, joined in by Mr. Chief Justice Vinson, in which he expressly pointed out that the *LeTourneau* case was not authority for the decision reached in the

Stowe Spinning case in that the *LeTourneau* case involved the prohibition of employee distribution of literature on company property during their non-working time as distinguished from non-employees. Mr. Justice Reed wrote at 336 U. S. 243 the following:

"There is nothing in this record that indicates a situation such as exists in employer owned lumber camps or mining properties. *It has never been held that where the employees do not live on the premises of their employer a union organizes has to be admitted to those premises.* The present situation differs from the employer controlled areas where the employees both live and work in that here union organizers may solicit the employees on the streets or in their homes or at public meeting houses within a few miles of their employment. Employees are not isolated beyond the hours of labor from an organizer nor is an organizer denied access to the employees. *After an organizer has convinced an employee of the value of union organization, that employee can discuss union relations with his fellow employees during non-working hours in the mill. This gives opportunity for union membership proliferation.*"* *Republic Aviation Corporation v. N. L. R. B. and N. L. R. B. v. LeTourneau Company of Georgia*, 324 U. S. 793.

In the *Stowe Spinning* case, Mr. Justice Jackson, while concurring in the result reached, did not agree with the reasoning by which it was reached and dissented in part, in which dissent, he clearly pointed out that he concurred in the result only because, to his satisfaction, the *Fifth Amendment to the Constitution of the United States* was not involved in that the Company had given up certain

*Emphasis added.

property rights in the property involved by committing its possession to someone else and that the Employer, having committed control of the property to someone else, could not properly interfere and command reversal of the other parties approval of the union's use of that property.

It is clear that Petitioner here asks this Court to enforce an order which is without precedent or authority and which seeks an extension of the holding of this Court in the *Le-Tourneau* case never intended by this Court, and in which this same Petitioner represented to the Court, in its brief, that the facts therein did not present, and the Board did not consider, the question of non-employees distributing literature on the employer's parking lot.

5.

Order of Board Improperly Equalizes Rights of Employees and Non-Employees

The order entered by the Board, which Petitioner here seeks to have enforced, accords to non-employee union organizers exactly the same rights and privileges as is accorded unto employees. The equalization of those rights was never intended by the Act, nor by Congress. As stated by the Fifth Circuit Court of Appeals in the case of *National Labor Relations Board v. Swartz*, 146 F. 2d 773 (1945) at page 774:

“Contrary to a rather general misconception, the National Labor Relations Act was passed for the primary benefit of the employees as distinguished from the benefit of labor unions, * * *”

The Second Circuit Court of Appeals recognized the distinction between the rights of employees and the rights of non-employee union representatives in the case of *N. L. R. B. v. Cities Service Oil Company*, 122 F. 2d 149 (1941) wherein it held that though the employer had violated the Act by refusing to permit the union which represented the employees to come aboard its vessel to see the employees, it specifically excluded the right of those representatives to solicit union membership on board the vessels. The court stated, at page 152, in this connection, the following:

“There can, however, be no reason for giving the representatives of the union passes, in order that it may solicit new members or collect dues * * *. The rights guaranteed by Section 7 (of the Act) primarily concerns bargaining as to terms and conditions of employment and not the perpetuation of the tenure of any particular agent. * * * *at all events the employer should not be required to issue passes except subject to the condition that they will be forfeited if the holder shall use his access either to solicit union membership or to collect dues.*”*

There is all the more reason why an employer should not be required to permit non-employee union representatives to solicit union membership on its property when the union is not the bargaining agent of the employees and the employees do not live on the employer's premises, as here.

In the case of *Richfield Oil Corporation v. N. L. R. B.* (1944), 143 F. 2d 860, the Ninth Circuit Court of Appeals held that though the employer was required to permit union officials that represented the employees who lived on board the employer's vessels to come on board its vessels for the

*Emphasis added.

purpose of collective bargaining, such union representatives were not entitled to solicit union membership on the employer's vessels.

Each the Ninth Circuit Court of Appeals in the case of *N. L. R. B. v. Monsanto Chemical Company*, 225 F. 2d 16, petition for certiorari pending, the Tenth Circuit Court of Appeals in the case of *N. L. R. B. v. Seamptrafe*, 222 F. 2d 858, certiorari granted, and the Fifth Circuit Court of Appeals in this case recognized that basic distinctions exist between rights accorded employees and non-employees by the Act. Section 7 of the Act specifically gives the rights encompassed in the Act to employees and also specifically provides that employees shall have the right to refrain from any or all of the activities provided for in the Act. Non-employees have no rights under the Act except such rights, by inference, as are necessary to prevent the rights accorded employees from being forfeited. Nevertheless, the Board here seeks to have this Court perpetuate an order of its own which would equalize the standards governing the conduct and rights of employees and the standards governing the conduct and rights of non-employee union organizers under the Act. Such equalization was never intended by Congress, and is not provided for, either expressly or impliedly by the Act. A distinction between those rights has been consistently recognized by our courts and properly so. The Petitioner here seeks to do away with that distinction. The Petitioner seeks to justify such equalization by arguing that it has put ample safeguards in the order by which it permits the employer to impose reasonable rules and regulations. (Petitioner's Brief, pp. 18, 23-26.) Such argu-

ment is completely foreign to the question before this Court. To require that employees be permitted to distribute literature on the employer's parking lot, does not invade his property or abridge his rights, they being licensees, as does the requirement permitting non-employees to distribute literature on the employer's parking lot. The employee already has a license from the owner of the parking lot to use it. Our courts have consistently recognized basic distinctions between the rights of licensees and strangers to the use of property in a variety of situations. The courts should not entertain the thought of equalizing those rights in any situation unless and until specifically provided for by Congress. Even then serious questions under the Fifth Amendment to the Constitution would arise.

Also, Respondent questions if the right which the union seeks to have enforced through the medium of the Board in this case is not a right which exists solely in behalf of the employees of Respondent and that they, and they alone, may seek enforcement of that right.

This Court has in many cases held that one can assert only his own rights and not the rights of others. Among such cases are those of *Jeffry Manufacturing Company v. Blagg*, 235 U. S. 571 and *Bourjois Inc. v. Chapman, et al.*, 301 U. S. 183. In this connection attention is called to the fact that the charge on which this case originated was filed by the Union, no employees of Respondent complained, and no employee of Respondent testified in behalf of the complaining union on the question here before the court, at the hearing held by the Board.

Burden of Proof Is Improperly Placed on Respondent

Petitioner premises its argument in its brief by a conclusion that it was unreasonably difficult for the non-employee union organizers to distribute their literature at places other than on Respondent's property. The Board, in its decision, did not so find but merely found that union literature could not readily be distributed off Respondent's premises. Petitioner, in its brief herein, places the burden of proving unreasonable difficulty, whatever the term means, upon Respondent, and places the further burden upon Respondent of proving that distribution of union literature upon its property would interfere with its business. This burden is properly upon the Petitioner and not on the Employer. *Universal Camera Corporation v. N. L. R. B.*, 340 U. S. 474.

The term "unreasonably difficult" is certainly an abstract term with little real meaning. At any rate, the Petitioner did not prove in this case that it was unreasonably difficult for the union to distribute its literature at places other than on Respondent's property. The most that can be said for the evidence in this connection is that the non-employee union organizer found some difficulty in distributing its literature on the public property at the point where Respondent's driveway intersects with the highway. But to say that it was unreasonably difficult for it to distribute its literature at this point is a stretch of the imagination and is in direct conflict with the evidence that, on

each of the three occasions the union organizers attempted to distribute literature at this point, they were successful.

The Board found that on June 15, 1953, the Union succeeded in distributing 300 pieces of literature to the 325 employees who were driving in and out of the driveway; on June 30, 1953, it was successful in distributing 195 pieces of union literature to 250 employees who were driving in and out of the driveway; and on July 13, 1953, over 225 pieces of union literature were passed out to 250 employees who were leaving work. (R. 69.) These were the only occasions on which the union attempted to distribute its literature at this point. Thus, it is apparent that on each occasion the union attempted to distribute literature on the 31 foot strip of public property between Respondent's property and the highway it was successful in distributing its literature to approximately 90% of all of Respondent's employees who were present on each of such occasions.

All of the evidence that was produced in the hearing below as to the difficulty of the union in distributing literature to Respondent's employees was and is to the effect that on the three occasions that they did distribute literature to Respondent's employees at the point where its driveway intersects with the public highway, it caused the cars of Respondent's employees to stop and become enmeshed in a traffic jam; that on one occasion Respondent's watchman and personnel manager had assisted in directing the traffic to become unsnarled, that the union organizers had been instructed by the local sheriff's department and local highway patrol to cease distribution at this point because

it was hazardous. The Petitioner did not seek at the hearing to introduce any other testimony in this connection but apparently took the position that this was sufficient to meet its burden of proof and from that point Respondent had the burden of proving that it was not unreasonably difficult for the union organizers to distribute their literature *at other places*, and the burden of proving that distribution on its property would interfere with its business. No attempt was made to establish that any other effort to contact the employees or to distribute their literature to the employees was unsuccessful or difficult. Nor, was any evidence produced that the actual distribution of literature at the intersection of Respondent's driveway with the highway was hazardous, Petitioner relying, in this connection, solely upon the hearsay statement to the union by the local sheriff and highway patrol that it was hazardous. The law enforcement officers were not called as witnesses. The fact that employee's cars had to stop and travel slowly as union literature was being distributed, in actuality afforded the union greater opportunity to distribute its literature.

These facts alone are not sufficient to meet the burden of proving impossibility and unreasonable difficulty of distributing union literature to an employer's employees, nor do they support the conclusion that it is unreasonably difficult to distribute union literature to Respondent's employees at places other than on its property. Such conclusion on the part of the Board, in its Brief, not only is contrary to the facts in this case, but is an indulgence in an inference not supported by the record as was done by the Board in the

cases of *Republic Aviation v. N. L. R. B.*, 324 U. S. 793 and *LeTourneau v. N. L. R. B.*, 324 U. S. 793. Such practice was specifically condemned by Congress in its discussion of the Taft-Hartley Act and was condemned by this Court in the case of *Universal Camera Corporation v. N. L. R. B.* (1950), 340 U. S. 474. Mr. Justice Frankfurter, in writing the opinion therein, discussed the legislative history of the Taft-Hartley Act and the Administrative Procedure Act wherein Congress clearly expressed its intention that findings of the Labor Board, based on inference not supported by substantial evidence, should not be permitted to stand by an appellate court, and then stated:

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some courts have shown in the past. * * * Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds." 340 U. S. 490.

It is submitted therefore, that the Trial Examiner's conclusion that union literature could not readily be distributed off Respondent's premises, and Petitioner's argument in its brief, that it is unreasonably difficult for the union to distribute its literature entirely off of Respondent's premises are but inferences not based upon substantial evidence, and at no time during the proceeding did it become incumbent upon Respondent to show that distribution of union literature could be distributed at places other than on Respondent's property or that distribution would create a produc-

tion or disciplinary problem. Further, no findings by the Board in its decision, support or authorize the argument now made by Petitioner that it is unreasonably difficult for the union to distribute its literature off Respondent's premises. Accordingly, it is the position of Respondent that the term "unreasonably difficult" is improperly embodied in the question presented to the court by Petitioner. Consequently, the court below properly denied enforcement of the order of the Board.

7.

There Are Adequate Means of Communication Between Respondent's Employees and the Union

The record shows that there were adequate avenues of communication open to the non-employee union organizers for them to communicate with Respondent's employees. Respondent's refusal to permit the non-employee union organizers to come on its parking lot and distribute their literature did not, and does not, cause any undue impediment to the right of self organization existing among its employees.

As already shown, there is a 31 foot wide strip of public property between the paved portion of the highway passing Respondent's plant and its plant property and the union organizers, on each of the three occasions they attempted to distribute literature at this point, were successful in reaching over 90% of all of Respondent's employees that were then using the parking lot. Additionally, the union organizers mailed union literature to approximately 100

of Respondent's employees on each of three occasions during the summer of 1953. (R. 71-72.) Union representatives communicated with *many* of Respondent's employees by talking with them on the streets of Paris, by driving to their home and talking with them there, and by talking with them over the telephone, all of which contacts were for the purpose of soliciting the adherence and membership of employees in the union. (R. 71-72.)

The plant of Respondent is located about 1 mile from the city limits of the town of Paris, Texas, which is a town of 21,000 people and the union organizers have all the various facilities available to them that a town that size affords, such as local newspapers, local radio stations, civic organizations, public meeting places, etc. (R. 66.) Additionally, all of the property that Respondent owns in the entire area of Paris is its plant site which consists of 100 acres of land, entirely contiguous, lying entirely on one side of a public highway known as Farm to Market Road 137. (R. 214.) The only public road which goes along Respondent's property is Farm to Market Road 137, (R. 67.) As Respondent's employees leave its plant and enter the public highway, if they go in a Northerly direction, which most of them do, they must traverse about $\frac{3}{4}$ of a mile before the first cross roads is reached, and if they go in a Southerly direction they must traverse 2 or 3 miles before the first cross roads is reached. (R. 68.) Thus there is 31 feet of public property on each side of the highway in front of Respondent's plant; private property, not controlled by Respondent in any way, across the highway from Respondent's plant, and private property, not controlled by Respondent in any way, adjacent to the

public highway right of way to both the North and the South of Respondent's property, by which all of Respondent's employees must pass in going to and from work. At each of these points literature can be distributed.

These various avenues of communication are sufficient and adequate avenues open to the use of non-employee union organizers if they were but exploited. In fact, the record shows that the union organizers were successful in using these avenues of communication to the extent that they attempted such. The union organizers attempted to communicate with Respondent's employees only during three months, June, July and August of the year 1953. During that short period of time they were successful in reaching most of Respondent's employees. However, the Union apparently decided that it would be quicker, easier and cheaper to see Respondent's employees on Respondent's parking lot. On August 28, 1953, the union organizers made the request of Respondent that they be permitted to come on the parking lot and distribute literature. This request was denied, which results in this matter being before the Court at this time, (R. 219-220.)

It may be, as the Board argues, that it is a little more expensive, it may take a little more effort, and a little more time for non-employee union organizers to contact the employees of an employer through the various means of communication that are open to them away from the employer's property, but surely, this inconvenience does not lead to the conclusion that it is unreasonably difficult to distribute literature elsewhere than on the employer's property; and

to the further conclusion that such inconvenience gives the non-employee union organizer the right to come upon the employer's property and use that property to the own aims and satisfactions of the union. Certainly the union organizers had ample opportunity to contact and converse with and did contact and converse with Respondent's employees at places other than on Respondent's property.

Respondent's employees are working a normal 40-hour per week schedule on two shifts. They are not engaged in long hours such as were the employees in the *LeTourneau* case. The union organizers may solicit the employees on the streets and in their homes and at public meeting places within a few miles of their employment, and if an organizer has convinced an employee of the value of union organization that employee can discuss union organization with his fellow employees during non-working hours in the plant. This gives ample opportunity for union membership proliferation. There is no unreasonable impediment to the employees freedom of communication by the non-discriminatory enforcement of Respondent's rule prohibiting non-employee union organizers from distributing literature on Respondent's property.

Respondent takes no issue with Petitioner that its employees are entitled to receive any literature they so desire. *Schneider v. State of New York*, 308 U. S. 147. Respondent will do everything within its power to protect this right. However, Respondent does take issue with Petitioner in its argument that distribution of literature at places other than on the property of Respondent is ineffective.

Respondent is not aware of any decision of this court which constitutes authority for the argument, and inference in the question presented in Petitioner's brief, that the immediate vicinity of the plant is the only place that affords the union ample and reasonable opportunity to communicate with employees and to distribute union literature. It is submitted that so long as the opportunity for effective and adequate communication between employees and union representatives exists at places other than in the immediate vicinity of the plant, there is no necessity that the communication be carried on in such immediate vicinity, and no justification exists for an abridgement of the traditional right of a property owner to control his property, select his own invitees and licensees, and to exclude trespassers. If this right of the property owner is to be abridged at all, it should be abridged only when the stranger to the property owner has encountered insurmountable obstacles in exercising his right, whatever it may be.

It was recognized by this Court in the *Schneider case* (supra) relied on by Petitioner, that the most effective distribution of literature was done in the homes in the following language:

"As said in *Lovell v. City of Griffin* (303 U. S. 444) pamphlets have proved most effective instruments in the dissemination of opinion and perhaps the most effective way of bringing them to the notice of individuals *is their distribution at the homes of the people.*"*

Such right of distribution at people's homes and on public streets was the right recognized by this Court in each of

*Emphasis added.

the cases of *Martin v. City of Struthers*, 319 U. S. 141; *Jamison v. Texas*, 318 U. S. 413 and *Lovell v. City of Griffin*, 303 U. S. 444, all cited by Petitioner. This right Respondent recognizes and will defend at all costs. For the same reasons, Respondent will oppose at all costs, any theory that the owner of private property must permit one group to distribute literature, to the exclusion of others, on his property. Particularly does Respondent oppose such an order in this instance involving distribution of literature by the union where the union has reasonable opportunity to contact the individuals sought to be contacted elsewhere. Certainly, as Petitioner argues, it is no answer, that communication may be made elsewhere to a denial of freedom of communication in *appropriate places*. (Petitioner's Brief, page 43.) However on the facts of this case, Respondent's property is not an appropriate place, within the framework of our constitution and laws, for the method of communication here sought to be indulged in by strangers.

8.

Petitioner's First Question Stated in Its Brief Was Not Decided by the Court Below

In passing, Respondent calls attention to the fact that Petitioner, in presenting its first question, states an entirely different question to that decided by the Court below. Nowhere in the order of the Board is it found that Respondent should be required to permit non-employee union organ-

izers to distribute union literature on its plant parking lot during employees *free time*. Also, nowhere in the order of the Board is there a finding to the effect that distribution must be permitted under the Act *where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant*. While the record shows that the union wrote a letter to Respondent requesting that it be permitted to distribute union literature in leaflet form to Respondent's employees on the parking lot at a time when the employees were coming to and leaving work, this phase of the request was ignored in the charge by the union, also in the complaint issued by the Board, and not raised until this case came before this Court. The order of the Board requires Respondent to permit distribution on its parking lot, walkways and drive without reservation as to time. (R. 219; 9-13; 18.)

Also, at no place in the record is there a finding, nor was the matter litigated, to the effect that it was *unreasonably difficult* for the union to reach the employees off company property *in the immediate vicinity of the plant*. The most that was found in this connection, with which finding Respondent disagrees, is that the right of way between the black top and Respondent's drive is not a safe or practicable location for distribution of literature to Respondent's employees and that distribution of literature cannot be readily conducted away from Respondent's premises. (R. 75.) The question decided by the Board, and by the Court below, is believed to be more fairly presented in the statement of questions made earlier in this brief.

B.

Second Question

The Court below properly denied enforcement of the Board's order because it is too broad, vague and indefinite to warrant enforcement.

1.

**Petitioner's Second Question, Stated in Its Brief,
Is Incomplete**

The second question presented in Petitioner's brief is incomplete in that it does not encompass the vagueness and indefiniteness of the Board's order. The order which Petitioner seeks to enforce requires Respondent to cease and desist from prohibiting distribution of union literature on its parking lot, walkways and drive except that Respondent may impose reasonable and non-discriminatory regulations in the interest of plant efficiency and discipline. What are reasonable regulations?

The order, in addition to having the evil of being too broad in its scope, is vague and indefinite, and the court below properly denied enforcement thereof.

2.

**The Board's Order Is Too Broad, Vague and Indefinite
to Warrant Enforcement**

(a) Vagueness and Indefiniteness of Board's Order

This Court in the case of *National Labor Relations Board v. Express Publishing Company* (1941), 312 U. S. 426, 433, in an opinion by Mr. Justice Stone stated:

"It is obvious that the order of the Board which, when judicially confirmed, the courts may be called

on to enforce by contempt proceedings, must, like the injunction order of a court, state with reasonable specificity the Acts which the Respondent is to do or refrain from doing. It would seem equally clear that the authority conferred on the Board to restrain a practice which it has found the Employer to have committed is not an authority to restrain generally all the other unlawful practices which it has neither found to have been pursued or persuasively to be related to the proven unlawful conduct."

Again, this court stated in the case of *May Department Stores Company v. N. L. R. B.* (1945), 326 U. S. 376, 390, in an opinion by Mr. Justice Reed, the following:

"The test of the proper scope of a cease and desist order is whether the Board might have reasonably concluded from the evidence that such an order was necessary to prevent the employer before it from engaging in any unfair labor practice effecting commerce."

The order which the Board entered and which Petitioner here seeks to have enforced, does not meet either of these tests. First, the order provides that Respondent may impose reasonable regulations with regard to the distribution of literature on its property by non-employee union organizers. Respondent has not the faintest idea as to what would be or what are reasonable regulations in this respect. The order does not set out what reasonable regulations may be imposed but leaves it to the discretion or imagination of the employer. Further, Respondent does not know how such regulations could be enforced against any individual who was not an employee of Respondent. Once the individual was granted permission to come upon Respondent's property, Respondent would have no control over

his actions except to eject him, and the order prohibits Respondent from doing this. Consequently, the order in one part attempts to give Respondent some means of regulation over the distribution of the literature, and then takes away that right in the next part.

As an example of the vagueness and indefiniteness of the order, Respondent poses the question that, were it to police its parking lot so as to establish reasonable rules, whatever the term might mean, for its use by non-employee union organizers, would it then be charged with surveillance or interference in violation of Section 8(a)(1) of the Act?

(b) Extending Order to Like or Related Acts

The order is not only vague and indefinite with reference to what Respondent is privileged to do and required not to do in connection with its refusal to permit the distribution of literature on its property by the union, wrongfully found by the Board to constitute an unfair labor practice, but goes further, and in the broad language of the statute requires Respondent to cease and desist from engaging in any like or related acts or conduct in violation of *Section 7 of the Act*. The last mentioned portion of the order being worded in exactly the language of *Section 7 of the Act*. Certainly, the Board had no basis upon which to reasonably conclude from the evidence that such an order was necessary to prevent Respondent from engaging in any unfair labor practice. The only unfair labor practice which the Board found Respondent had engaged in was that of refusing to permit the non-employee union organizers to

come on its parking lot to distribute literature. The other allegations of unfair labor practices against Respondent were dismissed by the Board. Nor is there any threat of future violations. The Petitioner argues that Respondent had a blanket no-distribution rule which applied to employees as well as non-employees directly contrary to the ruling in *LeTourneau*. (Petitioner's brief, 46.) While there is some evidence in the record to this effect, this matter was not litigated before the Trial Examiner, there being no complaint which encompassed such an issue against Respondent and Respondent did not attempt to rebut the testimony that was so introduced. Respondent did not at the time of the hearing have and does not now have a blanket no-distribution rule which would prevent its employees from distributing literature on its property, and had it had the experience of employees distributing literature upon its property, it would not have interfered therewith so long as employees were doing the distribution upon their own time and not in violation of its good housekeeping rule. This is not in this case and is not now before this Court for determination.

The order on its face, broad, indefinite and vague as it is, should not be enforced.

VIII.

CONCLUSION

Thus we find that over a period of years, since this court sustained the constitutionality of the Act in the year 1937 in the case of *N. L. R. B. v. Jones & Laughlin Steel*

Corp., 301 U. S. 1., the Board has pyramided its decisions and orders to the extent that it now seeks to seize an employer's property by exacting a servitude against it in favor of a particular union, requiring the employer to discriminatorily apply a non-discriminatory no-distribution rule in favor of that union, and give unto the organizers of that union, though not employees lawfully on the property, the right to use the employer's property for the purpose of distributing their literature and "discussing with the employees the questions that the literature is bound to evoke." All of this, attempted to be accomplished by an order vague and indefinite in purpose, as broad as the Act itself, and encompassing terms which an employer is called upon to obey that have never been defined by the Board or the courts. Certainly Congress never intended for such a result to be achieved by the National Labor Relations Act.

For the reasons stated, the judgment of the court below, denying enforcement of such an order, should be affirmed.

Respectfully submitted,

O. B. FISHER,
Liberty National Bank Bldg.,
Paris, Texas,
Attorney for Respondent.

December, 1955.

IX

CERTIFICATE OF SERVICE

The undersigned Counsel for Respondent certifies that five copies of the foregoing brief were deposited in a United States Post Office with air mail postage prepaid to each Hon. Simon E. Sobeloff, Solicitor General, Department of Justice, Washington 25, D. C., and David P. Findling, Esq., Associate General Counsel, National Labor Relations Board, Washington 25, D. C., this December 27th, 1955.

O. B. FISHER,
Liberty National Bank Bldg.,
Paris, Texas,
Attorney for Respondent.

APPENDIX A

The order entered by the National Labor Relations Board, which it here seeks enforced, reads as follows:

ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, The Babcock and Wilcox Company, Paris, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Prohibiting the distribution of union literature by union representatives on its parking lot and alongside the walkways from the gatehouse to the parking lot and the drive, provided, however, that the Respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution.

(b) Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Steelworkers of America, C. I. O., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or pro-

tection, or to refrain from any and all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Rescind immediately its rule prohibiting the distribution of union literature by union representatives on its parking lot at its Paris, Texas, plant, and alongside the walkways from the gatehouse to the parking lot and the drive.

(b). Post at its plant at Paris, Texas, copies of the notice attached hereto as an appendix. Copies of said notice, to be furnished by the Regional Director for the Sixteenth Region, shall, after being duly signed by the Respondent or its representatives, be posted by the Respondent immediately upon receipt thereof, and maintained by it for a period of sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for the Sixteenth Region, in writing, within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D. C., JUL 28 1954. (R. 53-55.)

APPENDIX B

The pertinent provisions of the *National Labor Relations Act*, as amended (61 Stat. 136, 29 U. S. C. 151, et seq.), and the text of the *Fifth Amendment to the United States Constitution* are as follows:..

NATIONAL LABOR RELATIONS ACT

Section 7

"Sec. 7: Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3)."

Section 8(a) (1) and (2)

"(a) It shall be an unfair labor practice for an employer:

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made and published by the Board pursuant to Section 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;"

Section 10(e)

“(e) The Board shall have power to petition any United States Court of Appeals (including the United States Court of Appeals for the District of Columbia), or if all the United States Courts of Appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified; or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or

agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States Court of Appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon Writ of Certiorari or certification as provided in Section 1254 of Title 28."

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

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NATIONAL LABOR RELATIONS BOARD

SEATTLE, WASH. (LINCOLN PLANT)

LETTER FOR A WRIT OF HABEAS CORPUS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. _____

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SEAMPRUFE, INC. (HOLDENVILLE PLANT)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Tenth Circuit entered on May 4, 1955, denying enforcement of an order issued by the Board against Seamprufe, Inc. (Holdenville Plant) (R. 10-25, 35-38).

OPINIONS BELOW

The opinion of the court below (App. A, *infra* pp. 7-12) is not yet reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 10-25, 35-38) are reported at 109 N. L. R. B. 24.

JURISDICTION

The judgment of the court below was entered on May 4, 1955 (App. A, *infra*, p. 13). The jurisdiction

diction of this Court is invoked under 28 U. S. C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature and soliciting union memberships on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*), are set forth in the Appendix-B, *infra*, p. 14.

STATEMENT

I

The facts

Upon the usual proceedings under Section 10 of the Act, the Board, on July 7, 1954, issued its findings of fact, conclusions of law, and order (R. 10-25, 35-38). The facts, as found by the Board and adopted by the court below, may be summarized as follows:

Respondent's manufacturing plant is located in the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 residents (R. 12; 46-48, 51,

69, 93). Its 200 employees reside in Holdenville, or in surrounding communities up to 30 miles from the plant, and come to work in private automobiles (R. 12; 75, 42-43). Respondent maintains a parking lot on its premises for their use (R. 12; 40, 41, 47, 62-64, 93). Because the plant is in a rural or semirural area and traffic on the adjoining roads is light, there is no stop sign at the intersection of the company driveway with the public highways or on the highways themselves in the vicinity of the plant (R. 13-14; 66, 69). Employees coming to work in the morning normally do not stop at any point near the plant until they reach the parking lot on company property, and likewise leave the parking lot at the close of work without stopping off company property anywhere in the vicinity of the plant (R. 13-14; 50-51, 65-66, 42-43).

Beginning in late 1952, representatives of the International Ladies' Garment Workers' Union, AFL (herein called the Union), visited respondent's parking lot several times to distribute union literature and solicit union memberships as the employees were coming to work (R. 36, n. 4, 14-17; 40-42, 52-53, 54). After the inception of these visits, respondent posted "No Trespassing" and "Private Road" signs on its premises and consistently warned Union representatives that they were trespassing on company property and must leave the premises (R. 14-17; 41-42, 54-59, 62-64, 71-72, 79, 80-85). The Holdenville

City Council likewise enacted an ordinance which forbade going upon private property without the owner's consent under penalty of fine (R. 14, n. 16; 78-79, 41, 53, 62-64, 71-72). Union representatives who thereafter sought to distribute literature or talk to employees on company property near the parking lot during their free time, were ordered off the premises by respondent, at times with company-summoned police aid (R. 15-17; 56-59, 79, 80-85).

II

The Board's conclusions and order

Upon these facts and the entire record, the Board found (R. 35, 18) that respondent prevented the distribution of union literature and solicitation of union memberships by non-employee union representatives in and about its parking lot during the employees' nonworking time. The Board found further (R. 35, 14, 18) that the employees' nonstop method of driving on and off company property made it virtually impossible for union representatives to communicate with the employees off company property in the vicinity of the plant, and that the only effective access to the employees, either upon arrival at or departure from the plant, was in the parking lot area. In the absence of any showing that respondent's rule was necessary in order to maintain plant production or discipline, the Board concluded (R. 35, 18-21) that respondent's prohibition

of access to the parking lot was an unreasonable impediment to the employees' right to self-organization, and hence a violation of Section 8 (a) (1) of the Act. *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, 797-798, 803. The Board rejected (R. 20, 35, n. 2) respondent's contentions that its no-trespassing rule was lawful because it was non-discriminatory and that the record did not support the conclusion that the Union did not have effective access to the employees away from the plant.

Accordingly, the Board ordered (R. 36-38) respondent to cease and desist from the unfair labor practice found and from any like or related conduct, to rescind its unlawful rule, and to post appropriate notices. The Board's order further provided (R. 36) that respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not so as to deny union representatives access to the parking lot for the purpose of effecting union distribution or solicitation.

III.

The decision of the court below

The court below (App. A, pp. 7-12) set aside the order of the Board on substantially the same grounds as those relied upon by the Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. The Babcock and Wilcox Company*, 222 F. 2d 316, in which the Board is simultaneously

filing a petition for certiorari. Holding that the *LeTourneau* case, *supra*, was inapplicable because the distributors there were employees, the court denied enforcement of the order.

REASONS FOR GRANTING THE WRIT

The decision below is erroneous and presents a square conflict of decisions on a recurring question of importance in the administration of the Act. The question presented in this case is substantially the same as that presented in *National Labor Relations Board v. The Babcock and Wilcox Company*, 222 F. 2d 316, in which the Board is simultaneously filing a petition for a writ of certiorari. For the reasons set forth in the petition in that case, to which the Court is respectfully referred, this petition for a writ of certiorari should also be granted.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMM HOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,

National Labor Relations Board.

JULY 1955.

APPENDICES

APPENDIX A

United States Court of Appeals, Tenth Circuit

No. 4996—November Term, 1954

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SEAMPRUFE, INC. (HOLDENVILLE PLANT),

RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

May 4, 1955.

Before BRATTON, HUXMAN and MURRAH, *Circuit
Judges.*

MURRAH, *Circuit Judge.*

This is a petition to enforce an order of the National Labor Relations Board directing Seamprufe, Inc. to cease and desist from prohibiting the use of its private parking lot and adjacent area by non-employee union organizers for distribution of union literature and solicitation of Seamprufe's employees to union membership during the employees' nonworking hours, on the ground that such prohibition constituted an unfair labor practice under Section 8 (a) (1) of the National Labor Relations Act, as amended. 61 Stat. 136, 29 U. S. C. A. § 151 et seq., 158 (a) (1).

Seamprufe operates a manufacturing plant located on the outskirts of Holdenville, Oklahoma, a town of approximately 6000 residents.

It employs approximately 200 persons on a one-shift basis. Two-thirds of the employees live in Holdenville, and one-third within a radius of from five to thirty miles from the city. None of the employees are represented by a union for collective bargaining purposes.

Late in 1952, representatives of the International Ladies' Garment Workers' Union, AFL, began contacting Seamprufe's employees before and after working hours, on the private parking area provided by Seamprufe for the use of its employees and upon the private sidewalk leading to the rear entrance of the plant. There they greeted the employees and sometimes distributed union literature. After the inception of these visits, Seamprufe posted "No Trespassing" and "Private Road" signs on its premises, and consistently warned the union representatives that they were trespassing on company property and that they must leave the premises. After the Holdenville City Council enacted an ordinance forbidding anyone from going upon private property without the owner's consent under penalty of fine, the union organizers were removed by the city police and arrested for trespassing.

The employees ride to and from work in privately owned automobiles, either singly or in groups. They approach the plant from the east along the public road on the south side of the plant premises. They enter company property driving north on a one-way company-owned road, and park their cars on the company parking facilities at the rear of the plant. After parking their cars the employees walk to the rear en-

trance of the plant on the private sidewalk connecting with the private road.

On leaving the plant after work, the employees proceed by direction from the parking area driving northeasterly on the private road to the public road intersection along the east side of the plant, turn south onto that road and continue thereon to the intersection with the public road bounding the plant premises on the south, where they turn left toward Holdenville. There are no stop signs at either intersection, and the Board affirmed the trial examiner's findings that the employees normally do not stop at any point in the vicinity of the plant except in the parking area because the plant is located in a semirural area and the traffic is light. There was testimony to the effect that at the close of work on a typical day in January 1954, 80 cars containing 225 employees left the parking lot at about a car length apart and at speeds varying from five to twenty-five miles per hour; that approximately ten minutes after cars first began to leave the lot, the entire caravan had departed from the plant area.

Following the rationale of *N. L. R. B. v. Le Tourneau Co.*, 324 U. S. 793, and succeeding cases, *N. L. R. B. v. Caldwell Furniture Co.*, 199 F. 2d 267 (4th Cir.) cert. denied, 345 U. S. 907; *N. L. R. B. v. American Furnace Co.*, 158 F. 2d 376 (7th Cir.); *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811 (7th Cir.), the Board found that the enforcement of Seamprufe's no-trespass rule was unnecessary to the maintenance of plant production and discipline; and further that the non-stop method of driving to and from the plant area

made it virtually impossible for union representatives to communicate with employees off Seamprufe's property. It therefore concluded that the enforcement of the non-discriminatory rule deprived the employees of their guaranteed right to self-organization constituting an unfair labor practice under Section 8 (a) (1) of the National Labor Relations Act.

The *Le Tourneau* case and those which followed it were concerned with the balancing of the guaranteed right of the employees to self-organization against the correlative right of the employer to maintain plant production and discipline. In arriving at this balance, the court in the *Le Tourneau* case very properly concluded that the right of the employees to distribute union literature and solicit employees upon company property was paramount to a no-solicitation rule in the absence of a showing that the enforcement of the rule was essential to the maintenance of plant production and discipline. And no such showing having been made, the court concluded that the enforcement of the company rule constituted an unfair labor practice.

The rationale of the *Le Tourneau* case was extended to the solicitation of employees by non-employees in a "working area used occasionally by employees and customers" in *Marshall Field & Co. v. N. L. R. B.* (7 Cir.) 200 F. 2d 375. But the latter court refused to extend the doctrine to non-employee organizers or solicitors in employees' restaurants and cafeterias in the absence of a showing that by virtue of the isolated character of their employment and residence, the employees were uniquely handicapped in the matter

of self-organization and concerted activity. See *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147.

Calling our attention to the fact that no right of an employee to solicit other employees on company property is involved here, but only the right of a non-employee to go upon company property in violation of a non-discriminatory no-trespass rule, Seamprufe earnestly contends that the rationale of the *Le Tourneau* case is wholly inapplicable to our facts; that our case rather falls within that part of the *Marshall Field* case which denied non-employees access to company property in the absence of a showing of restricted accessibility amounting to a handicap.

As we have seen, the fundamental basis for permitting the solicitation of union membership on company property is to vouchsafe the guaranteed right of self-organization, *N. L. R. B. v. Le Tourneau*, *supra*. When conducted by employees the solicitation amounts to the exercise of a right subject only to the correlative right of the employer to maintain plant production and discipline. An employee on company property exercising the right of self-organization does not violate a company no-trespass rule. *N. L. R. B. v. Monarch Tool Co.* (6 Cir.) 210 F. 2d 183. But a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization.

Here the union which the non-employee solicitors represented was not the bargaining agent

for the employees. Cf. *N. L. R. B. v. Monarch Tool Co.*, *supra*. Indeed the employees did not belong to any union, and the solicitors were therefore strangers to the right of self-organization, absent a showing of non-accessibility amounting to a handicap to self-organization.

The Board found special circumstances of inaccessibility. But we do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *N. L. R. B. v. Lake Superior Lumber Corp.*, *supra*, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization.

The no-trespass rule was non-discriminatory. There is no showing of antiunion discrimination as in *N. L. R. B. v. Stowe Spinning Co.*, 336 U. S. 226 and *Bonwit Teller, Inc. v. N. L. R. B.* (2 Cir.) 197 F. 2d 640, and its enforcement did not constitute an unfair labor practice.

The enforcement of the Board's order is therefore denied.

Judgment

One Hundred Seventh Day, November Term, Wednesday,
May 4, 1955.

Before Honorable SAM G. BRATTON, Honorable WALTER
A. HUXMAN, and Honorable ALFRED P. MURRAH, Circuit
Judges:

This cause came on to be heard on the transcript of the
record from the National Labor Relations Board and was
argued by counsel.

On consideration whereof, it is ordered and adjudged by
this court that the petition for enforcement of the Board's
order be and the same is hereby denied.

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*); are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

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Joint Report of the Committee on

Organized Labor

and the

National Labor Relations Board

Regarding the

Use of Force by Employers in the

Removal of Unions from the

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 251

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

SEAMPRUFE, INC. (HOLDENVILLE PLANT)

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the court below (R. 97-100) is reported at 222 F. 2d 858. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 10-25, 35-38) are reported at 109 NLRB 24.

JURISDICTION

The judgment of the court below was entered on May 4, 1955 (R. 101). The petition for a writ of certiorari was filed on July 21, 1955, and granted on October 10, 1955 (R. 101). The jurisdiction of this Court rests on 28 U.S.C. 1254, and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature and soliciting union memberships on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth in the Appendix to the brief in the companion case of *National Labor Relations Board v. Babcock and Wilcox*, pp. 48-50, No. 250, this Term.

STATEMENT

I

The Facts

Upon the usual proceedings under Section 10 of the Act, the Board, on July 7, 1954, issued its findings of fact, conclusions of law, and order (R. 10-25, 35-38). The facts, as found by the Board and adopted by the court below, may be summarized as follows:

Respondent's manufacturing plant is located in the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 residents (R. 12; 46-48, 51, 69, 93). Its 200 employees reside in Holdenville, or in surrounding communities up to 30 miles from the

plant, and come to work in private automobiles (R. 12; 75, 42-43). Respondent maintains a parking lot on its premises for their use (R. 12; 40, 41, 47, 62-64, 93). Because the plant is in a rural or semirural area and traffic on the adjoining roads is light, there is no stop sign at the intersection of the company driveway with the public highways or on the highways themselves in the vicinity of the plant (R. 13-14; 66, 69). Employees coming to work in the morning normally do not stop at any point near the plant until they reach the parking lot on company property, and likewise leave the parking lot at the close of work without stopping off company property anywhere in the vicinity of the plant (R. 13-14; 50-51, 65-66, 42-43).

Beginning in late 1952, representatives of the International Ladies' Garment Workers' Union, AFL (herein called the Union), visited respondent's parking lot several times to distribute union literature and solicit union memberships as the employees were coming to work (R. 36, n. 4, 14-17; 40-42, 52-53, 54). After the inception of these visits, respondent posted "No Trespassing" and "Private Road" signs on its premises and consistently warned Union representatives that they were trespassing on company property and must leave the premises (R. 14-17; 41-42, 54-59, 62-64, 71-72, 79, 80-85). The Holdenville City Council likewise enacted an ordinance which forbade going upon private property without the owner's consent under penalty of fine (R. 14, n. 16; 78-79, 41, 53, 62-64, 71-

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72). Union representatives who thereafter sought to distribute literature or talk to employees on company property near the parking lot during their free time were ordered off the premises by respondent, at times with company-summoned police aid (R. 15-17; 56-59, 79, 80-85).

II

The Board's Conclusions and Order

Upon these facts and the entire record, the Board found (R. 35, 18) that respondent prevented the distribution of union literature and solicitation of union memberships by nonemployee union representatives in and about its parking lot during the employees' nonworking time. The Board found further (R. 35, 14, 18) that the employees' non-stop method of driving on and off company property made it virtually impossible for union representatives to communicate with the employees off company property in the vicinity of the plant, and that the only effective access to the employees, either upon arrival at or departure from the plant, was in the parking lot area. In the absence of any showing that respondent's rule was necessary in order to maintain plant production or discipline, the Board concluded (R. 35, 18-21) that respondent's prohibition of access to the parking lot was an unreasonable impediment to the employees' right to self-organization, and hence a violation of Section 8(a)(1) of the Act. The Board rejected (R. 20, 35, n. 2) respondent's contentions that its no-

trespassing rule was lawful because it was nondiscriminatory and that the record did not support the conclusion that the Union did not have effective access to the employees away from the plant.

Accordingly, the Board ordered (R. 36-38) respondent to cease and desist from the unfair labor practice found and from any like or related conduct, to rescind its unlawful rule, and to post appropriate notices. The Board's order further provided (R. 36) that respondent may impose reasonable and nondiscriminatory regulations in the interest of plant efficiency and discipline, but not so as to deny union representatives access to the parking lot for the purpose of effecting union distribution or solicitation.

III

The Decision of the Court Below

The court below (R. 97-100) set aside the order of the Board on substantially the same grounds as those relied upon by the Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. The Babcock and Wilcox Company*, 222 F. 2d 316, certiorari granted October 10, 1955, No. 250, this Term, which is scheduled for argument here together with this case. Holding that this Court's decision in *National Labor Relations Board v. Le-Tourneau Co.*, 324 U.S. 793, on which the Board had relied, was inapplicable because the distributors there were employees, the court denied enforcement of the order.

ARGUMENT

The question presented in this case is substantially the same as that presented in the companion case, *National Labor Relations Board v. The Babcock and Wilcox Company*, No. 250, this Term. For the reasons set forth in the Government's brief in that case (pp. 14-44),* to which the Court is respectfully referred, we believe that the decision below is erroneous and should be reversed.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

RUTH V. REEL,
Attorney,
National Labor Relations Board.

NOVEMBER, 1955.

* Copies of that brief have been served on respondent.

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No. 251

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

vs.

**SEAMPRUFE, INC. (HOLDENVILLE PLANT),
*Respondent***

On Petition for a Writ of Certiorari to the United States Court of Appeals
for the Tenth Circuit

**BRIEF FOR THE RESPONDENT
IN OPPOSITION**

HOWARD LICHTENSTEIN
New York, New York
HAROLD E. MUELLER
KARL H. MUELLER
507 Burk Burnett Building
Fort Worth, Texas

PROSKAUER, ROSE, GOETZ & MENDELSON
11 Broadway
New York 4, New York
MUELLER & MUELLER
507 Burk Burnett Building
Fort Worth, Texas
Of Counsel

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No. 251

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

SEAMPRUFE, INC., (HOLDENVILLE PLANT),
Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals
for the Tenth Circuit

BRIEF FOR THE RESPONDENT
IN OPPOSITION

Seamprufe, Inc., Respondent herein, prays that the petition of the Solicitor General, on behalf of the National Labor Relations Board, for the issuance of a Writ of Certiorari to review the decision of the United States Court of Appeals for the Tenth Circuit entered on May 4, 1955, denying enforcement of an order issued by the Board against Seamprufe, Inc. (Holdenville Plant) be denied.

Opinions Below

The opinion of the court below is reported at National Labor Relations Board v. Seamprufe, Inc. (Holdenville Plant) C.A. 10; 222 F 2d 858 (adv.). The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 10-25, 35-38) are reported at 109 N.L.R.B. 24.

Jurisdiction

The judgment of the court below was entered on May 4, 1955 (App. A, *infra* p. 19). The jurisdiction of this court is invoked under 28 U.S.C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

Question Presented

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature and soliciting union memberships on his parking lot where it is not impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.

Statute Involved

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., 151 et. seq.), are set forth in Appendix B, *infra*, p. 20.

Statement

In connection with the policing of its property, Respondent adopted and enforced a *No-trespassing rule*. (R. 83-84) Signs to that effect were placed on the property. (R. 62-64, 71-72) The rule was enforced on a non-discriminatory basis, and there is no finding or contention to the contrary. Likewise Respondent's motivation in adopting and enforcing such rule is not questioned.

It is of prime importance to note at the outset that Respondent did not have a "no-distribution" or a "no-solicitation" rule. This fact is not questioned. There is no evidence that Respondent prohibited or attempted to prohibit its employees, or any of them, from distributing union literature or from soliciting union memberships or from engaging in any other activities in behalf of the union or in respect to self-organization on its property.

In the non-discriminatory enforcement of its no-trespassing rule Respondent did not permit strangers to come upon its property without its permission. It withheld such permission from various persons on various missions including non-employee union organizers employed by the complaining union who sought to station themselves on Respondent's property between the parking area and the factory doors for the purpose, on some occasions, of distributing union literature and on other occasions of simply saying "Good morning" to the employees. Such organizers and other strangers were ordered by Respondent to leave and not enter upon its property.

Undisputed is the fact that the complaining union by which such organizers were employed does not represent any of the employees at the Holdenville plant for purposes of collective bargaining. (R. 11) It is likewise undisputed that the persons in respect to whom the no-trespassing rule was enforced were not employees of Respondent. (R. 11)

It was stipulated that on the occasions involved Respondent employed approximately 200 employees,

two-thirds of whom resided in Holdenville, and a majority of the remaining one-third resided in communities within five or ten miles of Holdenville, while a few lived as much as thirty miles from that city. (R. 75) The plant operated only one shift. (R. 12, 71)

Two union organizers testified that about 4:30 one afternoon when the shift ended they observed the employees leaving the plant property in automobiles and that as they entered the public road most of them were "bumper to bumper" and proceeding slowly. They testified that none of the cars stopped upon reaching and entering the public road. Traffic on the public roads adjoining the plant is light. (R. 13-14, 18, 42-43, 50, 64-66)

It is upon this testimony that the Trial Examiner and the Board rested their finding "that this non-stop method of driving to and from the plant area is the normal manner in which the employees *invariably arrive at the plant area in the morning and depart in the evening.*" (Emphasis added, R. 14, 35-36)

This finding, particularly in respect to the manner in which the employees arrive at the plant in the morning, is a naked inference that is unsupported by and contrary to the record. There is nothing in the record to show or from which it may be inferred reasonably that the employees arrived in "caravan fashion." To the contrary is undisputed evidence that the arrival of employees is over a considerable period of time. (R. 56-57)

These are the "special circumstances" from which

the Examiner and the Board concluded "... that the difficulty of reaching prospective union members and distributing union literature to employees off of Respondent's property is virtually impossible ..." (R. 14, 18, 35)

The record is barren of anything to show that the union ever attempted to distribute its literature or to reach prospective members at the entrances to or exits from or elsewhere off Respondent's property. Likewise there is nothing to show that the employees had any occasion or reason to stop when leaving Respondent's property on the single occasion about which the union organizers testified and upon which the Board's order rests.

The Board attempted to meet this fatal deficiency in proof with the simple statement, based solely on surmise and conjecture, that it did not "believe that it was necessary for the organizers to go through the motions of making such an attempt as it is apparent that the nonstop method of driving by the employees would have rendered the effort futile and abortive." (R. 36, footnote 2)

On this flimsy and patently insubstantial record the Board adopted the Report of the Examiner and ordered Respondent

- (1) To rescind and cease and desist from enforcing "its rule prohibiting the distribution of union literature and solicitation of union memberships upon and adjacent to its parking lot during the employees nonworking time," provided, however, "that the Respondent may impose reasonable and non-discriminatory regula-

tions in the interest of plant efficiency and discipline, but not as to deny access to union representatives for the purpose of effecting such distribution or solicitation."

(2) To cease and desist from "Engaging in any like or related acts or conduct which interferes with, restrains, or coerces its employees in the exercise of their right to self-organization ..." under the Act, and

(3) To post notices stating, in substance and among other things, that union representatives will be given "full access" to the Respondent's property "on and near" its parking lot during nonworking hours of employees. (R. 35-38)

It was this sweeping order which the Court of Appeals refused to enforce. (222 F. 2d 858 (adv.))

Argument

The judgment of the Court of Appeals is correct and is not in conflict with any other decision so as to warrant further review of the case by this court.

Petitioner asserts that the decision of the Court of Appeals conflicts with other Courts of Appeals decisions, specifically: *National Labor Relations Board v. Ranco, Inc.* (C.A. 6) 222 F. 2d 543, (adv.), enforcing 109 N.L.R.B. 998; *National Labor Relations Board v. Caldwell Furniture Company* (C.A. 4) 199 F. 2d 267, certiorari denied, 345 U.S. 907, enforcing 97 N.L.R.B. 1501; *National Labor Relations Board v. Carolina Mills, Inc.*, (C.A. 4) 190 F. 2d 675, enforcing 92 N.L.R.B. 1141.

That no conflict exists will be demonstrated by the following analysis of the cited cases.

Ranco, Inc., 109 N.L.R.B. 998 was decided by the Board August 25, 1954. The following comments of Chairman Farmer and Member Peterson are significant:

"The single issue in this case is strictly limited to the extent of an employer's right to deny to non employee union representatives the privilege of distributing union campaign literature on the company's parking lot. As we view it, the rule in such situations is that an employer may not enforce such a rule if in fact it is impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.

"We agree with the majority on the record before us that the General Counsel has, by affirmative evidence, proved such inaccessibility at this plant.

"We do not, however, adopt the breadth of the rationale set out by the Trial Examiner in his Intermediate Report, wherein he apparently confuses the question of an employer's right to exclude nonemployees from the parking lot and the employer's right to prohibit union solicitation and activity by its employees on company property during nonworking hours. There is an implication in the Intermediate Report, that whenever an employer would exclude nonemployees from the parking lot, 'the burden is upon the employer to show the existence of circumstances warranting the prohibition.' That is not the law as we understand it. An employer must justify, by carrying an affirmative burden

resting upon him, a blanket prohibition against union activities or solicitation by his employees on company property. However, when it comes to the exclusion of strangers from the plant premises, the exercise of such privilege does not depend upon an employer being able to affirmatively prove that the rule is justified. Rather, as stated above, the affirmative burden rests upon the General Counsel to prove inaccessibility off the premises, and failing this the outside organizers have no right, enforceable by this Board, to come on the employer's premises for organizing purposes. We concur in the majority decision because we are satisfied that the General Counsel has sustained his Burden of Proof."

The *Ranco* case was enforced by the Court of Appeals for the Sixth Circuit in a per curiam decision, which stated in substance that there was substantial evidence to support findings of fact of the Board. It is thus apparent in the *Ranco* case that the Board found and the Court of Appeals agreed that on the evidence in the case it was impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.

This is in sharp contrast to the case at bar. Here, the Court of Appeals for the Tenth Circuit said,

"The Board found special circumstances of inaccessibility. *But we do not think that conclusion is legally justified by the facts.* True, the union organizers could not contact the employees at the entrance or exit to the company property, *but these circumstances did not insulate the employees from the union organizers.* **** The em-

ployees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization." (App. A p. 18) (Emphasis supplied.)

N.L.R.B. v. Caldwell Furniture Co., 199 F. 2d 267 (C.A. 4) was decided per curiam on the authority of the *Le Tourneau* case. The Board's decision, 97 NLRB 1501, shows that the rule there involved was general and applied to *employees*. The rule was adopted to prevent the distribution of *all* literature and prohibited the distribution of *any* literature. Gate-men were instructed to see that *no one* was passing out leaflets or placing them in or on the cars on the parking lot. (pp. 1507-1509)

N.L.R.B. v. Carolina Mills, 190 F. 2d 675 (C.A. 4) was decided per curiam. The Board's decision is reported at 92 NLRB 1141. The Trial Examiner found, with Board approval, that the Respondent there had prohibited "the Union, its representatives and members, and *other employees* from distributing the union literature on Respondent's property." (pp. 1168-1169, emphasis added) Apparently there was some evidence to show that in the particular situation there involved distribution off Respondent's property was not effective. This again is in sharp contrast to the case at bar.

In both the *Caldwell Furniture Co.* case and the *Carolina Mills* case the prohibitions invoked by the companies embraced employees. In the case at bar no restraint was placed upon employees during their

non-working hours with respect to union membership proliferation. The rule complained of applied to trespassers only.

It is clear that the difference between the Board and the court below was a factual disagreement over the relative facility of communication between employees and union representatives on employer's premises and elsewhere.

The decision of the court below is not in conflict with the decision of this court in *National Labor Relations Board v. Le Tourneau Company*, 324 U.S. 793. The *Le Tourneau* case involved rules of the company which applied to employees only. The rights of employees rather than union organizers were adjudicated in that case. This court held in substance that the no-distribution and no-solicitation rules there involved as applied to employees constituted an unreasonable and unlawful interference with the exercise of their rights under the Act.

The case of *Thomas v. Collins*, 323 U.S. 516, adverted to in petitioner's petition in *National Labor Relations Board v. The Babcock and Wilcox Company*, 222 F. 2d 316, in which the Board is simultaneously seeking certiorari involved the constitutionality of a Texas statute. This court pointed out that its decision was confined to the narrow question of whether the application of Section 5 (of the Texas statute) in that case contravened the First Amendment. (p. 532-533) The National Labor Relations Act was not involved (p. 542), and the case is not here controlling.

The petition in *The Babcock and Wilcox Company* case refers to *Marshal Field & Co. v. National Labor Relations Board*, (C.A. 7) 200 F. 2d 375. That case involved a Board order directing the company to permit *nonemployee* organizers to carry on organizing activities in the employees' restaurants and cafeterias, and elsewhere on the company's property. The court held that the order could not be sustained unless "the *employees* are 'uniquely handicapped in matter of self-organization and concerted activity'", (p. 381) and that "substantial evidence is lacking to sustain the charging union's contention that nonemployee union organizers are unable to contact the employees." (p. 382). The court further pointed out that *Le Tourneau* and its companion *Republic Aviation* case involved employees. (p. 381) The Board's order was denied enforcement except as to Holden Court which was found to partake of "the nature of a city street" (p. 380) and was used by the public.

Conclusion

The petition for a Writ of Certiorari should be denied.

Respectfully submitted.

HOWARD LICHTENSTEIN

New York, New York

HAROLD E. MUELLER

KARL H. MUELLER

Fort Worth, Texas

Attorneys for Respondent

PROSKAUER, ROSE, GOETZ & MENDELSON

11 Broadway

New York 4, New York

MUELLER & MUELLER

507 Burk Burnett Building

Fort Worth, Texas

Of Counsel

September, 1958

APPENDIX A

United States Court of Appeals, Tenth Circuit

No. 4996—November Term, 1954

NATIONAL LABOR RELATIONS BOARD,
PETITIONER

v.

SEAMPRUFE, INC. (HOLDENVILLE PLANT),
RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

May 4, 1955

Before BRATTON, HUXMAN and MURRAH, Cir-
cuit Judges.

MURRAH, Circuit Judge.

This is a petition to enforce an order of the National Labor Relations Board directing Seamprufe, Inc. to cease and desist from prohibiting the use of its private parking lot and adjacent area by non-employee union organizers for distribution of union literature and solicitation of Seamprufe's employees to union membership during the employees' nonworking hours, on the ground that such prohibition constituted an unfair labor practice under Section 8 (a) (1) of the National Labor Relations Act, as amended. 61 Stat. 136, 29 U. S. C. A. § 151 et seq., 158 (a) (1).

Seamprufe operates a manufacturing plant located on the outskirts of Holdenville, Oklahoma, a town of

approximately 6000 residents. It employs approximately 200 persons on a one-shift basis. Two-thirds of the employees live in Holdenville, and one-third within a radius of from five to thirty miles from the city. None of the employees are represented by a union for collective bargaining purposes.

Late in 1952, representatives of the International Ladies' Garment Workers' Union, AFL, began contacting Seamprufe's employees before and after working hours, on the private parking area provided by Seamprufe for the use of its employees and upon the private sidewalk leading to the rear entrance of the plant. There they greeted the employees and sometimes distributed union literature. After the inception of these visits, Seamprufe posted "No Trespassing" and "Private Road" signs on its premises, and consistently warned the union representatives that they were trespassing on company property and that they must leave the premises. After the Holdenville City Council enacted an ordinance forbidding anyone from going upon private property without the owner's consent under penalty of fine, the union organizers were removed by the city police and arrested for trespassing.

The employees ride to and from work in privately owned automobiles, either singly or in groups. They approach the plant from the east along the public road on the south side of the plant premises. They enter company property driving north on a one-way company-owned road, and park their cars on the company parking facilities at the rear of the plant. After parking their cars the employees walk to the

rear entrance of the plant on the private sidewalk connecting with the private road.

On leaving the plant after work, the employees proceed by direction from the parking area driving northeasterly on the private road to the public road intersection along the east side of the plant, turn south onto that road and continue thereon to the intersection with the public road bounding the plant premises on the south, where they turn left toward Holdenville. There are no stop signs at either intersection, and the Board affirmed the trial examiner's findings that the employees normally do not stop at any point in the vicinity of the plant except in the parking area because the plant is located in a semi-rural area and the traffic is light. There was testimony to the effect that at the close of work on a typical day in January 1954, 80 cars containing 225 employees left the parking lot at about a car length apart and at speeds varying from five to twenty-five miles per hour; that approximately ten minutes after cars first began to leave the lot, the entire caravan had departed from the plant area.

Following the rationale of *N. L. R. B. v. Le Tourn-eau Co.*, 324 U. S. 793, and succeeding cases, *N. L. R. B. v. Caldwell Furniture Co.*, 199 F. 2d 267 (4th Cir.) cert. denied, 345 U. S. 907; *N. L. R. B. v. American Furnace Co.*, 158 F. 2d 376 (7th Cir.); *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811 (7th Cir.), the Board found that the enforcement of Seampufe's no-trespass rule was unnecessary to the maintenance of plant production and discipline; and further that the non-stop method of driving to and from

the plant area made it virtually impossible for union representatives to communicate with employees off Seaprufe's property. It therefore concluded that the enforcement of the non-discriminatory rule deprived the employees of their guaranteed right to self-organization constituting an unfair labor practice under Section 8(a) (1) of the National Labor Relations Act.

The *Le Tourneau* case and those which followed it were concerned with the balancing of the guaranteed right of the employees to self-organization against the correlative right of the employer to maintain plant production and discipline. In arriving at this balance, the court in the *Le Tourneau* case very properly concluded that the right of the employees to distribute union literature and solicit employees upon company property was paramount to a no-solicitation rule in the absence of a showing that the enforcement of the rule was essential to the maintenance of plant production and discipline. And no such showing having been made, the court concluded that the enforcement of the company rule constituted an unfair labor practice.

The rationale of the *Le Tourneau* case was extended to the solicitation of employees by non-employees in a "working area used occasionally by employees and customers" in *Marshall Field & Co. v. N. L. R. B.* (7 Cir.) 200 F. 2d 375. But the latter court refused to extend the doctrine to non-employee organizers or solicitors in employees' restaurants and cafeterias in the absence of a showing that by virtue of the isolated character of their employment and residence, the

employees were uniquely handicapped in the matter of self-organization and concerted activity. See *N. L. R. B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147.

Calling our attention to the fact that ~~no~~ right of an employee to solicit other employees on company property is involved here, but only the right of a non-employee to go upon company property in violation of a non-discriminatory no-trespass rule, Seamprufe earnestly contends that the rationale of the *Le Tourneau* case is wholly inapplicable to our facts; that our case rather falls within that part of the *Marshall Field* case which denied non-employees access to company property in the absence of a showing of restricted accessibility amounting to a handicap.

As we have seen, the fundamental basis for permitting the solicitation of union membership on company property is to vouchsafe the guaranteed right of self-organization, *N. L. R. B. v. Le Tourneau*, *supra*. When conducted by employees the solicitation amounts to the exercise of a right subject only to the correlative right of the employer to maintain plant production and discipline. An employee on company property exercising the right of self-organization does not violate a company no-trespass rule. *N. L. R. B. v. Monarch Tool Co.* (6 Cir.) 210 F. 2d 183. But a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization.

Here the union which the non-employee solicitors represented was not the bargaining agent for the employees. Cf. *N. L. R. B. v. Monarch Tool Co.*, *supra*. Indeed the employees did not belong to any union, and the solicitors were therefore strangers to the right of self-organization, absent a showing of non-accessibility amounting to a handicap to self-organization:

The Board found special circumstances of inaccessibility. But we do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *N. L. R. B. v. Lake Superior Lumber Corp.*, *supra*, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization.

The no-trespass rule was non-discriminatory. There is no showing of antiunion discrimination as in *N. L. R. B. v. Stowe Spinning Co.*, 336 U. S. 226 and *Bonwit Teller, Inc. v. N. L. R. B.* (2 Cir.) 197 F. 2d 640, and its enforcement did not constitute an unfair labor practice.

The enforcement of the Board's order is therefore denied.

Judgment

One Hundred Seventh Day, November Term, Wednesday,
May 4, 1955.

Before Honorable SAM G. BRATTON, Honorable WALTER
A. HUXMAN, and Honorable ALFRED P. MURRAH, Circuit
Judges.

This cause came on to be heard on the transcript of the
record from the National Labor Relations Board and was
argued by counsel.

On consideration whereof, it is ordered and adjudged by
this court that the petition for enforcement of the Board's
order be and the same is hereby denied.

APPENDIX B

○The relevant provision of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are as follows:

Rights of Employees

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

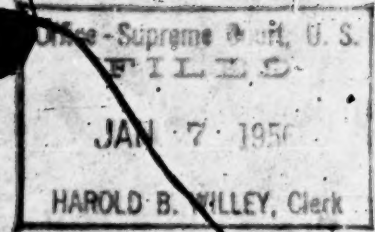
Unfair Labor Practices

Sec. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

LIBRARY
SUPREME COURT. U.S.



No. 251

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v.

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Respondent

On Writ of Certiorari to the United States
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BRIEF FOR THE RESPONDENT

PROSKAUER, ROSE, GOETZ &
MENDELSON

300 Park Avenue
New York 22, New York

MUELLER & MUELLER

Burk Burnett Building
Fort Worth, Texas
Of Counsel

HOWARD LICHTENSTEIN

New York, New York

HAROLD E. MUELLER

KARL H. MUELLER

Burk Burnett Building
Fort Worth, Texas

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BRIEF FOR THE RESPONDENT

Opinions Below

The opinion of the court below (R. 97-100) is reported at 222 F. 2d 858. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 10-25, 35-38) are reported at 109 NLRB 24.

Jurisdiction

The judgment of the court below was entered on May 4, 1955. (R. 101). The petition for a writ of certiorari was filed on July 21, 1955, and granted on October 10, 1955. (R. 101). The jurisdiction of this Court rests on 28 U.S.C. 1254, and Section 10 (e) of the National Labor Relations Act, as amended.

Questions Presented

1. Where respondent had neither a no-solicitation nor a no-distribution rule, where there is no evidence that respondent ever interfered or attempted to interfere with solicitation or distribution on its property by its employees, where respondent had a no-trespass rule in respect to which it was not improperly motivated and which was enforced on a non-discriminatory basis, where two-thirds of the approximately 200 employees at respondent's plant reside in a town of about 6,000 population on the outskirts of which the plant is located and the remaining one-third reside in communities within five to ten miles around that town with a few living as far as thirty miles from the plant, where there is no evidence that the charging union ever attempted in any way to communicate with respondent's employees anywhere off respondent's property, and where the charging union does not represent any of its employees for purposes of collective bargaining, did respondent violate Section 8 (a) (1) of the National Labor Relations Act by refusing to permit non-employee union representatives to enter upon and use its property particularly its parking lot and the area adjacent to and outside the doors to its building, for the purpose of soliciting union memberships and distributing union literature?

2. Whether the order of the Board is too broad, vague and indefinite?

Statute and Constitutional Provision Involved

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), and the text of the Fifth Amendment to the Constitution of the United States are set forth in the Appendix, *infra*, pp. 46-49.

Statement

I.

The Facts

A. Respondent's plant and operations

Respondent operates a manufacturing plant located on the outskirts of Holdenville, Oklahoma, a town of approximately 6,000 residents. (R. 12, 93)

It employs approximately 200 persons on a one-shift basis. (R. 71) Two-thirds of the employees live in Holdenville, and the remaining one-third live in communities within five or ten miles of Holdenville with a few living as much as thirty miles from the plant. (R. 75)

The factory building is situated on a twenty-five acre tract of land. (R. 69) A map or plat of the property is in the record which shows the location of the building, parking lots, etc., as well as the public road ways abutting it. (R. 70, 93)

The parking lot used by employees is situated on respondent's property immediately behind the factory building and north of the Airport Road which adjoins the property on the south. There is a private road

running northward from the Airport Road and between the west (back) side of the factory building and the parking area. (R. 47-48) There is no fence between the building and the parking lot. (R. 51, 93) There is a sidewalk along the east side of the private road that connects with a sidewalk running in an easterly direction to the west doors of the factory building. (R. 13, 53)

The employees ride to and from work in privately owned automobiles. (R. 12, 42-43) They enter respondent's property from the Airport Road and drive northward along the private road. (R. 48)

Those who drive their cars park them on the parking lot immediately behind the factory building and then walk to the rear entrance of the building. (R. 47, 48)

On leaving the plant after work the cars proceed northwardly along the private road, then turn to the right and proceed easterly along the north side of the factory building to the public "Access Road" which adjoins respondent's property on the east. (R. 67) There are no stop signs at the points at which the private road joins the Airport Road or the Access Road. Traffic on these public roads is light. (R. 13)

There was testimony to the effect that at the close of work one day in January, 1954, as the employees' cars left respondent's property and entered the public road most of them were proceeding slowly "bumper to bumper", and that none of them stopped, (R. 13-14, 18, 42-43, 50, 64-66) The record does not show that on that occasion any attempt was made to invite or

request the drivers of any of the cars to stop to talk or to receive literature or for any other purpose or that there was any reason or occasions for the cars to be stopped.

There is no evidence that the charging union represented any of the employees at the Holdenville plant for purposes of collective bargaining. (R. 11)

B. Respondent does not have a no-distribution or no-solicitation rule in respect to its employees.

There is no evidence that respondent had a no-solicitation or a no-distribution rule. Likewise there is no evidence that respondent ever prohibited or attempted to prohibit its employees, or any of them, from distributing union literature or from soliciting union memberships or from engaging in any other activities on its property in behalf of the union or in respect to self-organization.

C. Respondent's no-trespassing rule, the enforcement of which gave rise to the case at bar, was neither improperly motivated nor discriminatorily applied.

In connection with the policing of its property, respondent adopted and enforced a no-trespassing rule. (R. 83-84) Signs to that effect were placed on its property. (R. 62-64, 71-72) The rule was enforced on a non-discriminatory basis, and no contrary contention or finding was made. Respondent's motivation in adopting and enforcing the rule was not questioned.

In the non-discriminatory enforcement of its no-trespassing rule respondent did not permit strangers to come upon its property without its permission. It withheld such permission from various persons embarked on various missions including non-employee union organizers employed by the charging union who sought to station themselves on respondent's property between the parking area and the factory doors for the purpose, on some occasions, of distributing union literature and, on other occasions, of simply saying "Good morning" to the employees. (R. 83)

It is undisputed that the persons in respect to whom the no-trespassing rule was enforced were not employees of respondent. (R. 11, 40, 46, 60, 68)

D. No attempt was ever made by the charging union or its representatives, so far as the record shows, to solicit union memberships from or to distribute literature to or otherwise to communicate with respondent's employees at the entrances or exits to respondent's property or elsewhere or otherwise off respondent's property, and they were not prevented from so doing.

The record is barren of anything to show that the charging union or its representatives ever attempted to distribute literature to or to solicit union memberships from or to communicate otherwise with respondent's employees anywhere off respondent's property or that any circumstances of employee inaccessibility were present.

E. The only alleged unfair labor practice involved is the respondent's maintenance and enforcement, in the foregoing circumstances, of its no-trespassing rule in respect to non-employee union organizers.

The record contains nothing in respect to any alleged unfair labor practices on the part of respondent other than the maintenance and enforcement of its no-trespassing rule in respect to non-employee union organizers.

II.

The Board's Conclusions and Order

The findings and conclusions of the Trial Examiner were adopted by the Board. (R. 35)

Thus the Board concluded (R. 35, 20-21) that the rights of non-employee union representatives and the rights of respondent's employees are the same in respect to the use of respondent's property, particularly the parking lot and the area between that lot and the back doors to the factory building, for the purpose of soliciting union memberships and distributing union literature.

The Board found (R. 35, n. 2) that the distinction between respondent's no-trespassing rule and a no-solicitation rule "is one without a difference", and concluded (R. 35, 20) that "Normally, an employer cannot forbid union solicitation on company property during nonworking time even where there is no showing that solicitation away from the plant would be ineffective."

The Board further concluded (R. 35, 18, 19-20) that in order for respondent to sustain its rule which prevented non-employee union representatives from using its property for purposes of solicitation and distribution the burden was on respondent (a) to show that such rule was necessary in order to maintain production or preserve discipline in the plant or (b) to show the existence of "unusual circumstances" which would "override the Union's right to distribute its literature on Company property", neither of which respondent did.

Because of the "special circumstances" evidenced by the fact that normally employees do not stop their cars in driving to and from respondent's property, the Board concluded (R. 35, 14, 18, 36, n. 2) that "****the difficulty of reaching prospective union members and distributing union literature off of respondent's property is virtually impossible****", notwithstanding there is no evidence that the union ever attempted to communicate with employees off of respondent's property.

The Board concluded (R. 35, 21), therefore, that the maintenance and enforcement by respondent of its no-trespassing rule constitutes an unreasonable impediment to freedom of communication essential to the exercise of its employees' right of self-organization and as such violated Section 8 (a) (1) of the Act.

Accordingly, the Board ordered (R. 36-38) respondent (1) to cease and desist from (a) "Enforcing its rule prohibiting the distribution of union lit-

erature and solicitation of union membership on and adjacent to its parking lot during the employees' nonworking time **** and (b) "Engaging in any like or related acts or conduct ****", and (2) to (a) rescind said rule and (b) post notices which pointed out that while respondent may establish "reasonable controls", "full access" shall not be denied to union representatives for the purpose of distribution.

III.

The Decision of the Court Below

The court below (R. 97-100) denied enforcement of the Board's order.

The court pointed out (R. 100) that when conducted by employees the solicitation of union membership on company property amounts to the exercise of a right subject only to the correlative right of the employer to maintain plant production and discipline and that an employee on company property exercising the right of self-organization does not violate a company no-trespass rule. But, it concluded, a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization.

Noting that the union which the non-employee solicitors represented was not the bargaining agent for the employees the court concluded (R. 100) that they were strangers to the right of self-organization,

absent a showing of non-accessibility amounting to a handicap to self-organization.

The court further held (R. 100) that the special circumstances of inaccessibility found by the Board were not legally justified by the facts, that these circumstances did not insulate the employees from the union organizers, that the employees lived in or near a small city and were easily accessible to union solicitors, that the no-trespass rule was non-discriminatory, that there was no showing of anti-union discrimination, and that there was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization.

The court concluded (R. 100) that respondent's enforcement of its no-trespass rule did not constitute an unfair labor practice and therefore denied enforcement of the Board's order.

The court did not pass on the constitutional question posed in respect to the invasion and taking of respondent's property that would result from the enforcement of the Board's order. (R. 30-31) Neither did it pass on the question raised in respect to the broad reach of the order.

Summary of Argument

(1) The Board's order is not supported by and is contrary to the record considered as a whole and the court below properly denied enforcement.

(2) This court's decision in *National Labor Relations Board v. Le Tourneau Company of Georgia*, 324 U. S. 793, does not pass on the issues here presented

and the principles therein enunciated cannot be extended logically or properly to support the right of non-employees to use respondent's property under the facts of this case.

Absent a showing, as in this case, of discrimination against union organizers in respect to the use of its property (as in the *Stowe*¹ or *Marshall Field*² cases) or that the union whose representatives sought access to its property was the bargaining agent of the employees (as in the *Cities Service*³ or *Richfield*⁴ cases) or that the employees were laboring under a "unique handicap" or unreasonable difficulty in respect to accessibility to union organizers (as in the *Lake Superior Lumber*⁵ case), no court has held that non-employee union organizers have the right to enter upon and use an employer's private property for organizational purposes contrary to his wishes. Any such holding would be violative of the employer's property rights under the Constitution.

(3) The Board erred fundamentally when it attempted to equate the rights of employees who were on respondent's property in consequence of their employment there and of non-employees to use such property for organizational purposes. The right to self-organization is vested in the employees and not in non-employees who want to solicit the employees for membership in a union.

¹*National Labor Relations Board v. Stowe Spinning Co.*, 336 U. S. 226

²*Marshall Field and Company v. National Labor Relations Board*, 200 F. 2d 375

³*National Labor Relations Board v. Cities Service Oil Co.*, 122 F. 2d 149

⁴*Richfield Oil Corp. v. National Labor Relations Board*, 143 F. 2d 860

⁵*National Labor Relations Board v. Lake Superior Lumber Co.*, 167 F. 2d 147

(4) Respondent never prevented or attempted to prevent its employees from soliciting union memberships or distributing union literature on its property. Likewise neither the charging union nor any of its representatives ever attempted to solicit union memberships, to distribute union literature, or to communicate with the employees anywhere off of respondent's property.

No "unique handicap" or unreasonable difficulty in communicating with respondent's employees was shown to exist which might, "on balance", and aside from the constitutional questions involved, justify the requirement that respondent yield up to non-employee union organizers the use of its property for organizational purposes.

The argument of the Board based on the alleged apathy and ignorance of the employees in respect to the exercise of their rights under the Act and the "convenience" and "effectiveness" that would stem from use of the respondent's property by non-employee organizers as compared with their communicating with employees off of such property in union meetings, in the employees' homes, and elsewhere, and by mail, telephone and otherwise is completely outside the record, furnishes no support for the Board's order, and is patently wide of the mark. It completely overlooks, among other things, the right of employees to refrain from self-organization and other concerted activity.

(5) The court below was correct in deciding in this case that, absent a showing of non-accessibility amounting to a handicap to self-organization, there

was no impediment to union solicitation off respondent's property and that the non-discriminatory enforcement by respondent of its no-trespass rule did not constitute an unfair labor practice.

(6) Reversal by this court of the decision of the Court of Appeals for the Fifth Circuit in the case of *National Labor Relations Board v. Babcock and Wilcox Company*, 222 F. 2d 316, certiorari granted October 10, 1955, No. 250, this Term would not require or support reversal of the decision of the Court of Appeals for the Tenth Circuit in this case.

Argument

I.

The Findings and Order of the Board Are Not Supported by the Record.

A. The facts here are substantially different from those in *Babcock and Wilcox*.

The Board in its brief in this case has adopted the argument made in its brief in *National Labor Relations Board v. The Babcock and Wilcox Company*, No. 250, this Term, on the premise that the questions there and here presented are the same. (Board's brief, p. 6)

While respondent is of the opinion that the *Babcock and Wilcox* case was correctly decided by the Court of Appeals for the Fifth Circuit, it does not agree that the questions there presented and here involved are the same so that the decision of this Court in that case will or should rule this case.

There are substantial and material differences in

the facts, in the Board's decisions and orders, and in the opinions of the courts below as an examination of the records in the two cases will disclose.

In the *Babcock* case:

(1) The Board contends that the respondent there had promulgated a "blanket" rule prohibiting distribution of literature on its parking lot either by employees or by any outsiders. (Board's brief, p. 5)

(2) It appears that the union there made some attempt to communicate with employees off of the company's property. (Board's brief, pp. 4-5, 41)

(3) The parking lot was outside the fence enclosing the plant and the employees had to pass through guarded gate houses in entering the plant. (Board's brief, pp. 3, 24-25)

(4) The Board asserts that 60 per cent of the employees live "in widely scattered" small communities or in the countryside within a radius of 30 miles of the plant and that posted along the highway as it passes the company's premises are state highway signs reading "No parking" and "Speed limit 60 miles per hour". (Board's brief, pp. 3-4, 41)

In the case at bar:

(1) No "blanket" rule is involved.

(2) No attempt was made by the union to communicate with employees off company property and they were not prevented from so doing.

(3) The parking lot is enclosed within the plant fences, and there are no guards or gate houses.

(4) The respondent's employees basically are concentrated in the Holdenville area and the roads to and around the plant property are local in nature with no prohibition of parking.

The Board's order in this case would require respondent to permit its property to be used by non-employees for purposes of solicitation as well as distribution whereas only distribution is involved in the *Babcock* case. (Board's brief, p. 7)

The notice which the Board's order in this case would require to be posted provides for "full" access to be accorded non-employee union representatives whereas only access is required in the *Babcock* case.

The opinion of the court below in this case is not subject to the criticism which the Board undertakes to make in respect to the court's opinion in the *Babcock* case.

Respondent therefore respectfully submits that reversal of the *Babcock* case would not require or support a reversal of the decision of the court below in this case.

The employees here were not inaccessible to non-employee union organizers off respondent's property.

Here no special circumstances of inaccessibility of employees to union organizers existed. The court below correctly held (R. 100) that the Board's conclusion that such circumstances existed is not "legally justified by the facts". The court pointed out that the employees here lived in or near a small city and were easily accessible to union solicitors" and that there was no impediment to union solicitation off company property. (R. 100)

The effect of the absence of inaccessibility in respect to the right of non-employee organizers to use an employer's property for organizational purposes was clearly recognized and stated in the concurring opinion of Board Chairman Farmer and Member Peterson in *Panco, Inc.*, 109 NLRB 998 at 1000, 1001, wherein they said;

"The single issue in this case is strictly limited to the extent of an employer's right to deny to non-employee union representatives the privilege of distributing union campaign literature on the company's parking lot. As we view it, the rule in such situations is that an employer may not enforce such a rule if in fact it is impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises.

We agree with the majority on the record before us that the General Counsel has, by affirmative evidence, proved such inaccessibility at this plant.

We do not, however, adopt the breadth of the rationale set out by the Trial Examiner in his Intermediate Report, wherein he apparently confuses the question of an employer's right to exclude nonemployees from the parking lot and the employer's right to prohibit union solicitation and activity by its employees on company property during nonworking hours. There is an implication in the Intermediate Report that, whenever an employer would exclude nonemployees from the parking lot, 'the burden is upon the employer to show the existence of circumstances warranting the prohibition'. That is not the law as we understand it. An employer must justify, by carrying an affirmative burden resting upon him, a blanket prohibition against union activities or solicitation by his employees on company property. *However, when it comes to the exclusion of strangers from the plant premises, the exercise of such privilege does not depend upon an employer being able to affirmatively prove that the rule is justified. Rather, as stated above, the affirmative burden rests upon the General Counsel to prove inaccessibility off the premises, and failing this the outside organizers have no right, enforceable by this Board, to come on the employer's premises for organizing purposes. We concur in the majority decision because we are satisfied that the General Counsel has sustained his Burden of Proof.*" (Emphasis added.)

- C. The cases in which the inaccessibility of employees posed a serious or unique handicap or unreasonable difficulty in respect to self-organization have no application.

The fact situation presented in the case of *N.L.R.B. v. Lake Superior Lumber Corp.*, 167 F. 2d 147 (C.A. 6) was entirely different from that presented here. There, as the court pointed out, the employer's camps situated on land controlled by it were located 17 or 18 miles from the nearest city, the woodsmen worked from 7:00 a.m. to 4:00 p.m. six days a week, "and usually spent all their time, including Sundays, in the camps". The employees were charged for their lodging. 167 F. 2d 147 at 148. The issue was whether or not in those circumstances the employer was entitled to prevent union organizers from coming into the camps for the purpose of communicating with the employees in the bunk-houses and recreation hall during their free time. The court concluded in favor of the right of union organizers to visit employees on the property of the employer under reasonable regulations, ". . . where the circumstances are such 'that union organization must proceed upon the employer's premises or be seriously handicapped' ". 167 F. 2d 147 at 151. In so holding it appears that the court attached significance to the fact that the employees there spent their free time on the employer's property "as a matter of right": 167 F. 2d 147 at 152.

In the instant case the Board's conclusion that it was "virtually impossible to distribute union literature to employees or to solicit union memberships off re-

spondent's property" was based solely on the fact that on one occasion the employees when leaving work did not stop their cars upon reaching the public road abutting the plant property. No attempt was made to invite them to stop, and there was no occasion or reason for them to do so. The Board inferred that the employees employed this same "non-stop" driving in arriving at the plant.

The record is barren of anything to show that the union ever attempted to distribute literature to employees at the entrances or exits to respondent's property off of said property. The Board expressed the belief, however, that it was not necessary that such attempts be made as it was "apparent that the nonstop method of driving by the employees would have rendered the effort futile and abortive". (R. 36)

The court below, noting that the Board found special circumstances of inaccessibility, said:

"But we do not think that conclusion is legally justified by the facts." (R. 100)

Continuing, the court said:

"Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *N.L.R.B. v. Lake Superior Lumber Corp.*, supra, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization." (R. 100)

This statement was quoted with approval by the

court in *N.L.R.B. v. Monsanto Chemical Co.*, 225 F. 2d 16, 21.

In the *Ranco* case, 109 NLRB 998, the Board found in effect that under the facts there involved the employees were under such a serious handicap in respect to self-organization off company property that it was appropriate to require the company to permit distribution of union literature by non-employee organizers on company parking lots. The Court of Appeals for the Sixth Circuit granted enforcement of the Board's order by per curiam opinion in which it stated that there was substantial evidence to support the Board's findings of fact and that the Board properly applied the principles of decisions in the *Lake Superior Lumber* case and others. *N.L.R.B. v. Ranco, Inc.* 222 F. 2d 543. It appears, therefore, that the court was of the opinion that a serious handicap there existed as in the *Lake Superior Lumber* case. Certiorari was granted by this Court in *Ranco, Inc. v. N.L.R.B.* No. 422, on November 14, 1955.

The Court of Appeals for the Seventh Circuit made the following pertinent summary statement in *Marshall Field and Co. v. N.L.R.B.*, 200 F. 2d 375 at 379:

"The courts have held that Sec. 7 of the Act gives a right to a non-employee to enter and solicit union membership on an employer's premises under two general situations, the first of which is where there has been discrimination. *N.L.R.B. v. Stowe Spinning Co.*, 336 U. S. 226, 69 S. Ct. 541, 93 L. Ed. 638; *Bonwit Teller, Inc. v. N.L.R.B.* 2 Cir., 197 F. 2d 640. However, the Board found that discrimination did not exist in the instant case. The second situation is where union organi-

zation must proceed upon the employer's premises or be 'seriously handicapped.' An illustration is where a lumber camp was isolated and its very location prevented employees from gaining access to outside contacts. *N.L.R.B. v. Lake Superior Lumber Corp.*, 6 Cir., 167 F. 2d 147."

None of those situations is here presented.

D. Enforcement of the Board's order would result in a taking of respondent's property in violation of the Fifth Amendment.

The respondent contends that the decision of the court below should be affirmed on the basis of the decisional principles therein applied and hereinabove discussed without the necessity of reaching the constitutional questions raised by the Board's order. Respondent further contends that the enforcement of the Board's order would result in the taking of its property in violation of the Fifth Amendment.

The enforcement of the Board's order would create a servitude on respondent's property in favor of non-employee union organizers under and by virtue of which they would have the right to enter upon and to use such property for organizational purposes over respondent's objection and contrary to its wishes.

Respondent recognizes, of course, that its rights in its property are not absolute. Its use of that property is circumscribed by applicable governmental regulations made within permissible constitutional limits.

Assuming, without admitting, that Congress has the power to authorize the imposition of the conditions and

limitations prescribed by the Board's order the fact remains that the Act contains no such provision and neither the Act nor its legislative history evidence any congressional intent or purpose to authorize any such action or result.

The courts, in construing the Act, have not held that the Board is authorized or empowered to make an order such as is here involved in the circumstances here presented.

In the *Cities Service* case the Court of Appeals observed that

"It is not every interference with property rights that is within the Fifth Amendment and we see no basis for invoking the Constitution in the present situation. . . . Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." 122 F. 2d 149 at 152.

In the *Cities Service*, *Richfield*, *Lake Superior Lumber* and similar cases the employees lived as well as worked on the property to which the non-employee organizers sought access.

In the *Cities Service* and *Richfield* cases the unions involved had status under the law as bargaining agent for the employees who worked and lived on the tankers and who, in consequence, were denied access to their bargaining agent absent the right to communicate with the representatives of that agent on board the vessels.

The Courts of Appeals enforced the Board's orders only in respect to access for the purpose of discharging

statutory duties as the bargaining agent and not for purposes of solicitation. Such cases included carrying on business with the employer's representatives.

In the case of *Lake Superior Lumber* the employees lived on company property and paid for their lodging. The Trial Examiner, with Board approval, found that the employees were tenants in the employer's camps and as tenants had the right to receive any person in their home with whom they had legitimate business. 70 NLRB 178 at 196. No such tenancy is here involved. Moreover the factor of inaccessibility there involved is not here present. The nature and extent of the dislocation of property rights in the circumstances of such tenancy and inaccessibility in that case is entirely different from that which the Board's order here requires. Further the justification for such dislocation in that case does not lie under the facts of this case.

In the *Stowe* case the employer had surrendered possession and control of its property in question to a fraternal organization. This Court was very careful to point out that "... the very denial of the hall" was not found to be an unfair labor practice and that only discrimination was involved. 336 U.S. 226 at 233. The Board's order was modified so as to provide only against discrimination by the employer. No taking of the employer's property there resulted such as would result should the Board's order here be enforced. Mr. Justice Jackson there stated

"If the employer's were controlling the hall directly, I would have serious doubts whether denial of union use of the hall could be an unfair labor practice ...". 336 U.S. 225 at 235.

In the *Marsh* case the property involved had been opened by the owner to use by the public. That was also true of Holden Court in the *Marshall Field* case. In this case respondent's property is not open to the public.

The Board's order would force respondent to open its property to use by anyone representing a union. This, respondent submits, necessarily involves a taking of its property without warrant in law or fact and in contravention of its rights under the Constitution. This vice in the Board's order is not met or cured by the "on-balance" or "convenience" arguments that the Board makes when it says, in effect, that the injury suffered by respondent in consequence of the taking of its property that the order would entail is less than that which unions and their organizers would suffer if respondent's property were not turned over to them, particularly where, as here, there is no showing that union organizers could not conveniently pursue their activities off respondent's property.

II.

Neither *Le Tourneau* Nor Any Reasonable Extension of It Afford a Basis in Law for the Board's Order According Non-Employee Union Organizers the Right to Enter Upon and Use Respondent's Property.

This Court has never decided the question here presented.

A. The issue involved in this case was not decided by this Court in the *Le Tourneau* case.

In *Le Tourneau* the pertinent issue involved the application of a no-distribution rule to **employees** who were then on the company's property in consequence of their employment and not to union organizers who were strangers.

There the issue was stated by the Board as follows:

“*** the sole question confronting us is whether, under the circumstances of the instant case, to the extent that the rule prohibits *distribution of union literature by employees* on the parking lots, it constitutes such a serious impediment to the freedom of communication *** that the right to self-organization must be held paramount, and the rule give way.” 54 NLRB 1253, 1260 (Emphasis added)

The order of the Board therein provided that the company shall “Rescind immediately the rule against distribution of literature *insofar as it prohibits distribution of union literature by employees* outside the gates of the plant and in the parking lots.” 54 NLRB 1253, 1264 (Emphasis added)

In its brief to this Court in that case the Board said,

"The facts in the instant case do not present and the Board did not consider the question which would arise if union representatives who were not employed at the plant sought to distribute literature on the parking lots ***." Board Brief in No. 452, October Term, 1944, page 29, footnote 17.

Thus it is clear that the decision in *Le Tourneau* concerned only the application of a no-distribution rule to employees and not to non-employees.

B. The principles recognized and enunciated in *Le Tourneau* do not support or constitute authority for the Board's decision and order herein.

The Board's reliance upon and attempted extension of the *Le Tourneau* decision to support its decision and order herein is made clear in the following conclusion of the Trial Examiner (R. 20-21) which was adopted by the Board (R. 35):

"To differentiate between employees soliciting on behalf of the Union and nonemployee union solicitors would be a differentiation not only without substance but in clear defiance of the rationale given by the Board and the Courts for permitting solicitation. This conclusion is based on the belief that the rationale enunciated by the Supreme Court in the *Le Tourneau* case, *supra*, is equally applicable in the case of solicitation by union representatives as well as where the solicitation is done by employees."

This attempt to equate the rights of employees and

of non-employees to use the respondent's property for the solicitation of union memberships and the distribution of union literature is the foundation upon which the Board's decision and order herein primarily are rested. Respondent submits that it is completely unwarranted by *Le Tourneau* or any other decision of this Court and that it constitutes a fundamental error in the Board's decision which will not permit its order to stand.

Based upon the erroneous premise that the rights of non-employees are the same as those of employees to use the respondent's property here involved for organizational purposes, the Board undertook to invoke and apply principles enunciated or recognized in *Le Tourneau*.

Thus it held that the burden was on respondent to sustain its no-trespassing rule by showing (a) that it was "necessary to maintain production or preserve discipline in the plant" (R. 18) or (b) that "special circumstances" pertaining to the operation of its particular plant "**** override the union's right to distribute its literature on company property ****". (R. 19-20)

This rule, applied by the Board in *Le Tourneau*, was drawn from its decision in *Peyton Packing Company*, 49 NLRB 828, at 843, 844, to which this Court made reference in its *Le Tourneau* decision (324 U.S. at 803, 804). In the *Peyton* case the Board said:

"**** time outside working hours, whether before or after work, or during luncheon or rest periods, is an employee's time to use as he wishes

without unreasonable restraint, although the employee is on company property. It is therefore not within the province of an employer to promulgate and enforce a rule prohibiting union solicitation by an employee outside of working hours, although on Company property. Such a rule must be presumed to be an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary in order to maintain production or discipline." (Emphasis added).

The last sentence of this quotation defines the area of adjustment "on balance" between the rights of employees to self-organization and the property rights of the employer to which this Court referred in *Le Tourneau*. Patently it furnishes no authority for the argument of the Board that the determination of whether respondent is legally entitled to keep **non-employees** off of its property turns "on balance" as between the injury that respondent would sustain if its property rights were violated and the injury the union, and presumably the employees, would suffer in time, expense and inconvenience in organizing if respondent's property rights were respected.

Further the Board drew from its *Le Tourneau* decision and here undertook to apply the holding that "It is no answer to suggest that other means of disseminating union literature are not foreclosed" in rejecting the contention that because the union had adequate means of communication with the employees outside of company property the enforcement of a rule which prohibited solicitation by non-employees

on company property did not improperly restrict the employees' rights under Section 7 of the Act. (R. 20)

Clearly the foregoing principles of *Le Tourneau* which the Board has sought to apply here relate peculiarly and only to employees who are on their employer's property in consequence and in pursuance of their employment. One of the two employees involved in *Le Tourneau* was on his lunch hour and the other one was on a bus on company property preparing to leave after completing a day's work when the violations of the no-distribution rule occurred. Their physical presence on the property was neither contrary to their employer's wishes nor violative of his property rights.

The rule there impinged on the activities of employees — the very persons in whom the rights enumerated in Section 7 of the Act are vested—not on outside organizers who desired to solicit on behalf of a union or otherwise participate with the employees in the exercise of those rights.

Even as to employees the *Le Tourneau* decision is not authority for the proposition that those who are not on their employer's property in connection with and as a part of their employment may enter upon and use such property for organizational purposes at their will and pleasure subject only to reasonable rules and regulations necessary for the maintenance of production and discipline. Any such holding would raise serious constitutional questions.

Rules and regulations necessary for the maintenance of production and discipline are peculiarly ap-

plicable to employees. The principle involved which was spelled out in the *Peyton* case and applied in *Le Tourneau* must be viewed and applied in the situation in which it was evolved—in the employer-employee relationship, and not in the relationship of the employer to non-employees. In this connection Mr. Justice Reed pointed out that in the *Le Tourneau* and *Republic* cases “*** the problem concerned the right of an employer to maintain discipline by forbidding employees to foster by personal solicitation union organization on the grounds or in the plant of the Company during the employees’ non-working time”. Continuing he said, “We held that, unless there were particular circumstances that justified such a regulation to secure discipline and production, the employer must allow such discussion.” 336 U.S. 226, at 243-244.

By its order in this case (R. 36, 37) the Board would accord respondent the right to impose reasonable and non-discriminatory regulations “in the interest of plant efficiency and discipline” in respect to the use of its property for organizational purposes but not so as to deny “full access” to non-employee union organizers for the purposes of soliciting union memberships and distributing union literature. Plant efficiency and discipline make sense when related to employees but they become sheer nonsense when they are related to non-employees. How can an employer provide for the discipline of non-employees who are trespassers as to him and over whom he can exercise neither sanction nor control?

Thus it is seen from the context in which the princi-

ples of *Le Tourneau* were evolved that when applied to employees in the circumstances of that case they appear reasonable but that they do not cover and cannot logically or reasonably be made to apply to non-employees in the circumstances of this case.

This was recognized in the concurring opinion of Chairman Farmer and Member Peterson in *Ranco, Inc.*, 109 NLRB 998 at 1000, 1001 as has been pointed out above. It was there stated that:

“*** when it comes to the exclusion of strangers from the plant premises, the exercise of such privilege does not depend upon an employer being able to affirmatively prove that the rule is justified. Rather, ***, the affirmative burden rests upon the General Counsel to prove inaccessibility off the premises, and failing this the outside organizers have no right, enforceable by this Board, to come on the employer's premises for organizing purposes.”

It will be observed that neither in the *Ranco* case nor in this case was any mention made of accessibility off of the employer's property having to be in the “immediate vicinity” of or “immediately adjacent” to such property in order to avoid subjecting such property to use by non-employee organizers. This condition was engrafted on the statement of the “Questions Presented” in the Board's petition and brief to this Court. It had not theretofore appeared in the litigation, and it does not appear in any case on which the Board relies for the support of its order.

Under the Act the right to organize and to engage in concerted activity or to refrain therefrom is vested

solely in the employees. As the Court of Appeals for the Ninth Circuit said in *N.L.R.B. v. Monsanto Chemical Company*, 225 F. 2d 16, "It is to the employees that rights are granted by § 7". The exercise of their rights is for the employees alone and not for outside organizers who have no right to exercise the employees' rights in whole or in part. The principle is well established that one can assert only one's own rights and not the rights of others. *Jeffrey Mfg. Co. v. Blagg*, 235 U.S. 571, 576, *Virginia Railway v. Federation*, 300 U.S. 515, 558, *Bourjois, Inc. v. Chapman*, 301 U.S. 183, 190.

The extent to which the factor of non-accessibility of the employees off of the company's property under the facts there present figured in the *Le Tourneau* decision is not apparent. While the Board asserted that it was no answer to its criticism of the no-distribution rule that other means of communication off of the company's property were not "foreclosed", it is apparent that the Board attached great significance to the factor of non-accessibility both in its decision and before this Court. Otherwise it would not have labored as it did the facts in that connection which patently are substantially different from those in this case. In addition it appears that the Board there undertook to supplement the facts of record with its so-called expert knowledge in the field of labor relations as it has undertaken to do in its brief in this case.

In the latter connection it must be recognized that significant changes in the law have occurred since this Court's decision in *Le Tourneau*. The legislative history of the Taft-Hartley Act clearly reflects congres-

sional dissatisfaction with Board decisions that were rested on inferences drawn from " * * * specialized knowledge that is supposed to inhere in administrative agencies * * *" but " * * * that were not, in turn, **supported by facts in the record.** (*Republic Aviation v. N.L.R.B.*, 324 U.S. 793; *Le Tourneau Company v. N.L.R.B.*, 324 U.S. 793)." H. R. Rep. No. 510 80th Cong. 1st Sess. 55, 56, 1 Legislative History 559-560 (Emphasis added).

While this Court pointed out in *Universal Camera Corporation v. N.L.R.B.*, 340 U.S. 474, 485, 486 that the sufficiency of evidence to support findings of fact was not involved in *Republic* and *Le Tourneau*, the criticism of those decisions by the House conferees and the intent to preclude such decisions is nonetheless valid or clear. Adherence to the principles set forth by this Court in the *Universal Camera* case requires that the order in the case at bar be denied enforcement.

Whatever may be said of non-accessibility as a decisional factor in *Le Tourneau* the fact remains that in the case at bar **non-accessibility of respondent's employees to union organizers off of respondent's property was not proved and the court below was correct in so holding.** (R. 100)

Thus the Board's position is reduced to the bald and patently unsound proposition that the charging union and any other labor organization and their representatives have an enforceable right at the hands of the Board to use respondent's private property for organizational purposes among respondent's employees without regard for the factor of accessibility

and notwithstanding the existence of a non-discriminatory, no-trespassing rule, and the absence of unfair labor practices, and lack of union status as bargaining agent.

In *Le Tourneau* only a no-distribution rule was involved. In this case the Board's order would subject respondent's plant property to use by non-employee organizers for purposes of solicitation as well as distribution. This fact poses additional questions, the answers to which cannot be found in *Le Tourneau* or in any reasonable or constitutional extension of it.

Under the Board's order here the practical query naturally arises as to whether the non-employee organizers may solicit more than one employee at a time. If so, then obviously they may talk to and solicit groups of employees. The maximum permissible number in the group, the time such meetings may be convened, the length of time they may continue, and the means or methods of propagandizing and solicitation that may be employed properly are questions that are raised by the Board's order. Indeed they arise the very moment the respondent is forced to surrender the use of its property to non-employees as the Board's order would require.

The Board itself has recognized the impropriety if not the illegality of requiring an employer to open up his property to unions for group meetings when it said,

"We do not believe that unions will be unduly hindered in their rights to carry on organizational activities by our refusal to open up to

them the employer's premises for group meetings, particularly since this is an area from which they traditionally have been excluded, and there remains open to them all the customary means for communicating with employees."

Livingston Shirt Corporation, 107 NLRB 400 at 401. 2

That the *Le Tourneau* decision cannot be extended properly under the facts of this case to support the right of non-employees to use respondent's property or the right of respondent's employees to have non-employees use that property as required by the Board's order is further elucidated in other decisions in respect to the use of employer's property that are discussed below.

C. The "blanket rule" rule cases in which employees as well as non-employees were prohibited from distributing literature on the employer's property furnish no support for the Board's order.

In support of its position the Board cites *N.L.R.B. v. Carolina Mills*, 190 F. 2d 675 (C. A. 4), *N.L.R.B. v. Caldwell Furniture Co.*, 199 F. 2d 267 (C. A. 4), and *N.L.R.B. v. Monarch Tool Co.*, 210 F. 2d 183 (C. A. 6).

The Board's decisions clearly show that each of these cases involved a broad rule which applied to employees. *Carolina Mills*, 92 NLRB 1141, *Caldwell Furniture Co.*, 97 NLRB 1501, *Monarch Tool Co.*, 102 NLRB 1242. The Court's opinion in the *Monarch* case makes clear the fact that the Board's order there was enforced on the authority of *Le Tourneau* because

of the applicability of the rule to employees. The per curiam opinions in the *Carolina* and *Caldwell* cases indicate that the same was true of those cases.

In this case the rule which is the subject of the Board's order had no application to employees. As the court below observed (R. 100) "An employee on company property exercising the right of self-organization does not violate a company no-trespass rule."

Thus the decisions involving "blanket" rules have no application to this case.

D. The cases dealing with discrimination in respect to the use of the employer's property and the use of privately owned property which is open to the general public are clearly inapposite.

1. The Stowe Spinning case

In the case of *N.L.R.B. v. Stowe Spinning Co.*, 336 U.S. 226, 233 (1949) the decision of this Court turned and was based on discrimination, as the following statement from the majority opinion clearly establishes,

"In this case *** the Board did not find that the very denial of the hall was an unfair labor practice. *** What the Board found, and all we are considering here, is discrimination."

As was there pointed out the employer had turned over the possession and control of the company-owned meeting hall in the company town involved to a fraternal organization comprised in part of employees. This organization had permitted the hall to be used

for various meetings. It had agreed to let it be used for a union meeting when the employer intervened and caused that use to be denied. The employer did not contest the Board's finding that antiunion bias was the cause for its action.

This Court modified the Board's order so as to "order respondents to refrain from any activity which would cause a union's application to be treated on a different basis than those of others similarly situated." 336 U.S. 226 at 233.

Manifestly the facts in the *Stowe* case are substantially different from those here involved. In this case it is neither contended nor shown that respondent was improperly motivated in the promulgation or enforcement of its no-trespassing rule or that the rule was discriminatorily enforced.

While Mr. Justice Jackson agreed with the court that the Board was justified in finding that the employer's action in the *Stowe* case constituted an unfair labor practice, he did not think that this finding "is or can be based on discrimination". (336 U.S. 226 at 234) He went on to say in his opinion (336 U.S. 226, at 234-235)

"The employers, having permitted the Patriotic Sons to control use of the hall, could not properly interfere and command reversal of the Sons' approval of the Union's application.

*** The interference to oust the Union was enough without a discrimination, *** I think the Board could require the employer to notify the Patriotic Sons that it has been unfair in the objections heretofore made and that it will make

no objections in the future, and that the Patriotic Sons are free to allow such temporary use if they see fit.

But the Board's order goes beyond this. It has ordered that the employers take affirmative action to place the hall of the Patriotic Sons at the disposal of the Union. *** If the employer's were controlling the hall directly, I would have serious doubts whether denial of union use of the hall could be an unfair labor practice ***.

In his dissenting opinion in the *Stowe* case Mr. Justice Reed distinguished the situation there presented from that presented in *Le Tourneau* which involved the activities of employees and stated that:

"It is only when there is a violation through an interference with or a restraining or coercion of employees' rights under Section 7 that an unfair labor practice may be predicated upon the employer's acts. The employer is not required to aid employees to organize. The law forbids only interference." 336 U.S. 226, 240, 241.

In respect to an employer's property rights and the rights of employees and unions he said,

"There is nothing in this record that indicates a situation such as exists in employer owned lumber camps or mining properties. Where an employer maintains living, recreation and work places on such business premises open to employees by virtue of their employment, it has been held that exclusion of union organizers from contact with the employees is an unfair labor practice and that the Board's ordering the employer to grant union representatives access in

non-working hours to the employees under reasonable regulations is a proper means to effectuate the purpose of the Act. *Labor Board v. Lake Superior Lumber Corp.*, 167 F. 2d 147. It has never been held that where the employees do not live on the premises of their employer a union organizer has to be admitted to those premises." 336 U.S. 226, 243 (Emphasis supplied)

"After an organizer has convinced an employee of the value of union organizations, that employee can discuss union relations with his fellow employees during non-working hours in the mill. This gives opportunity for union membership proliferation: *Republic Aviation Corp. v. Labor Board* and *Labor Board v. Le Tourneau Company of Georgia*, 324 U.S. 793."

These principles, respondent respectfully submits, should and do rule the facts of the instant case. The court below correctly found that respondent's employees are not inaccessible to union organizers off of company property and that there was no impediment to union solicitation off that property. (R. 100)

2. The case of *Marsh v. Alabama*

In the case of *Marsh v. Alabama*, 326 U.S. 501 the state punished a distributor of religious literature for trespass when she insisted on passing out pamphlets on a private sidewalk in a company town that had been opened up by the owner to use by the public. This Court there said,

"The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by

the statutory and constitutional rights of those who use it ***". 326 U.S. 501, 506 (Emphasis added)

Based on this proposition the Board here boldly asserts that,

"Having opened up its property for employee use for its own advantage, respondent cannot exclude as trespassers persons whose presence is necessary for an effective exercise of the employees' statutory rights". (Board's brief in *Babcock and Wilcox*, No. 250, this Term, p. 33)

This statement, which appears to be the crux of the Board's case, is invalid on several counts: first, it assumes a state of facts which is not supported by the record (as the court below correctly found); secondly, the conclusion based on such assumption is not legally justified; and thirdly, it is not a correct statement of the law.

Referring, in part, to the above quotation from the *Marsh* case Mr. Justice Reed had this to say in his opinion in the *Stowe* case;

"Certain expressions *** occur in the opinion as to the right to use private property for speech, press and assembly but they must be read in the light of the facts in the *Marsh* case. So read, or however read, they cannot be construed as a holding that the natural right of free expression or of assembly, guaranteed by our Constitution, is a delusion unless organizers and evangelists can commandeer private buildings for use in the propagation of their ideas. The *Marsh* case, in my view, goes no further than to say that the public has the same rights of discussion on the

sidewalks of Company towns that it has on the sidewalks of municipalities". 336 U.S. 236 at 242.

3. The Marshall Field case

In the case of *Marshall Field and Company v. N.L.R.B.*, 200 F. 2d 375, the Court of Appeals for the Seventh Circuit granted enforcement of the Board's order only insofar as it related to the use by non-employee union organizers of Holden Court which, although owned by the employer, partakes of "the nature of a city street" and is used by the public. (p. 380.

Noting the Board's reliance on the *Le Tourneau* case in its decision and in its argument, the court pointed out that that case involved employees. It held that the order of the Board could not be sustained as to property other than Holden Court unless "the employees are 'uniquely handicapped in matter of self-organization and concerted activity' ". (p. 381) The court there found, as in effect did the court below in this case, that substantial evidence was lacking to sustain the contention that non-employee union organizers are unable to contact the employees. Accordingly enforcement of the order was denied excepting only as to Holden Court.

In the case at bar it is clear that respondent has not opened or surrendered control of its property or created a servitude or right of user by grant or otherwise that in any way restricts its right to enforce its no-trespassing rule.

E. The cases in which the charging union was bargaining agent for the employees do not support and are contrary to the Board's order.

Even in cases where the charging union was bargaining agent and it was necessary for its representatives to go upon company property in order to communicate with employees in the discharge of its duties as such bargaining agent, the employers were not required to grant access to such representatives for purposes of solicitation or distribution.

In the case of *N.L.R.B. v. Cities Service Oil Co.*, 122 F. 2d 149 (C. A. 2) the union involved was the bargaining agent for tanker employees who were peculiarly inaccessible to representatives of the union off the vessels on which they worked and lived. While holding that the employer violated the Act by refusing to permit union representatives to come aboard the vessels for the purpose of investigating and negotiating in respect to grievances the court said,

"There can, however, be no reason for giving the representatives of the Union passes in order that it may solicit new members or collect dues. Such activities were not shown by the Board to have been required 'for the purposes of collective bargaining or other mutual aid or protection' even if they are guaranteed under Section 7 under some circumstances. The rights guaranteed by Section 7 primarily concern bargaining as to terms and conditions of employment and not the perpetuation of the tenure of any particular agent."

"Under 2(a) of the order the conditions and the number of passes are to be determined by

collective bargaining but at all events the employer should not be required to issue passes except subject to the condition that they will be forfeited if the holder shall use his access either to solicit union membership or to collect dues." (emphasis ours) *N.L.R.B. v. Cities Service Oil Co.*, 122 F. 2d 149, 152.

It was in the circumstances of that case that the court observed "Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining." 122 F. 2d 149 at 152. The Board has seized upon this statement and has sought to give it a broad application completely inconsistent with and divorced from the context in which it was uttered.

A similar situation was involved in *Richfield Oil Corporation v. N.L.R.B.*, 143 F. 2d 860 (C. A. 9). The court there held that the employer was required to permit representatives of the union that was bargaining agent for the employees to come aboard its vessels:

"*** for the purposes of collective bargaining, for the discussion and presentation of grievances, and for other mutual aid and protection of the employees represented by the unions, including the collection of dues and distribution of trade papers to union members, provided, however, that the petitioner is not required to issue passes for the solicitation of membership ***" (emphasis ours) *Richfield Oil Co. v. N.L.R.B.*, 143 F. 2d 860, 863.

In the case at bar the charging union was not the

representative of respondent's employees for purposes of collective bargaining. Moreover the inaccessibility of the employees in the *Cities Service* and *Richfield* cases was not here present. Absent, as in this case, status of the union as the bargaining agent and the inaccessibility of employees those decisions support the decision of the court below. That is true even without taking into account those absent factors.

III.

The Decision of the Court Below Is Correct and Should Be Affirmed

The conclusion of the court below (R. 100) that the Board's finding of special circumstances of inaccessibility on which the order rests was not supported by the record considered as a whole was arrived at in the proper discharge of the court's reviewing function under the Act and is supported by the record. The court's conclusions that the respondent's employees were easily accessible to union solicitors and that there was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization are likewise supported and justified. The record affords no basis for contrary conclusions.

The decision of the Court of Appeals is in accordance with the law as has been pointed out above. It is not at variance with any decision of this court or of any other court of appeals. Being correct on the law and the facts it follows that it should be affirmed.

Conclusion

For the reasons stated, the judgment of the court below should be affirmed.

Respectfully submitted,

HOWARD LICHTENSTEIN

New York, New York

HAROLD E. MUELLER

KARL H. MUELLER

Burk Burnett Building

Fort Worth, Texas

PROSKAUER, ROSE, GOETZ &
MENDELSON

300 Park Avenue

New York 22, New York

MUELLER & MUELLER

Burk Burnett Building

Fort Worth, Texas

Of Counsel

APPENDIX A

The pertinent provisions of the *National Labor Relations Act*, as amended (61 Stat. 136, 29 U. S. C. 151, et seq.), and the text of the *Fifth Amendment to the United States Constitution* are as follows:

NATIONAL LABOR RELATIONS ACT

Section 7

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3)."

Section 8 (a) (1) and (2)

"(a) It shall be an unfair labor practice for an employer:

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made and published by the Board pursuant to Section 6, an employer shall not be prohibited from permitting employees to confer with him

during working hours without loss of time or pay;"

Section 10(e)

"(e) The Board shall have power to petition any United States Court of Appeals (including the United States Court of Appeals for the District of Columbia), or if all the United States Courts of Appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to

questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgement and decree shall be final, except that the same shall be subject to review by the appropriate United States Court of Appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon Writ of Certiorari or certification as provided in Section 1254 of Title 28."

FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in

the militia when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

SEP 26 1955

HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. _____

422

RANCO INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals
For the Sixth Circuit.

HARRY E. SMOYER,
EUGENE B. SCHWARTZ,
V. JAY EINHART,

970 Union Commerce Building,
Cleveland 14, Ohio,

Attorneys for Petitioner.

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NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

For the Sixth Circuit.

Ranco Inc., petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered on April 27, 1955 (petition for rehearing denied June 30, 1955), granting enforcement of an order of the National Labor Relations Board issued against petitioner.

OPINIONS BELOW.

The findings of fact, conclusions of law, and order of the National Labor Relations Board are reported at 109 NLRB 998 (R. 130-138). The judgment of the Court below is reported at 222 F. (2d) 543. (It is also attached to the certified copy of the Joint Appendix, following

¹ "R" citations in this petition are to the pages of the printed Joint Appendix filed in the Court below, nine copies of which have also been filed in this Court. Exhibits of the General Counsel are designated "G. C. Ex." and the petitioner's exhibits (Respondent in the proceedings below) are designated as "Resp. Ex."

page 142a, as are the Petition for Rehearing and the order of the Court below denying rehearing.)

JURISDICTION.

The judgment of the Court below was entered on April 27, 1955. Petition for Rehearing was duly filed and was denied on June 30, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254, and Section 10(e) of the National Labor Relations Act as amended (29 U. S. C. 160).

QUESTION PRESENTED.

Where Petitioner is charged only with having denied Union representatives an opportunity to distribute literature on its premises, where Petitioner had a long-standing rule prohibiting distribution of literature on its premises by non-employees (which rule was uniformly enforced as to all types of distributions), where Petitioner freely permitted its employees to distribute literature of all kinds both within the plant and within the confines of its property, where both pro-union and anti-union literature was distributed on its property by its employees, and where there was an area immediately outside the plant gates where non-employee organizers could and did effectively distribute union literature, did Petitioner violate Section 8(a) (1) of the National Labor Relations Act by prohibiting the distribution of literature on its parking lot by non-employee union organizers?

STATUTE INVOLVED.

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151 *et seq.*), insofar as is here pertinent, provides:

"Rights of Employees.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a) (3).

Unfair Labor Practices.

SEC. 8. (a) It shall be an unfair labor practice for an employer * * *

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;"

STATEMENT OF THE CASE.

I. THE FACTS.

A. Background of Petitioner's Literature Distribution Rule, and Its Application:

For many years prior to January, 1953, petitioner had a rule in effect at its Delaware, Ohio, plant which provided that:

"Delaware Plant employees are permitted to distribute literature on Company property, *but not on Company time.*" (G. C. Ex. 2; R. 14a.)

This rule was first posted in the Delaware plant about November 29, 1950 and remained posted after that date (R. 14a-15a, 56a).

The Board found that the rule was applied indiscriminately to all non-employees who desired to distribute literature of any kind on petitioner's property, and that it was not directed at Union literature (Resp. Ex. 1A, 1B; R. 15a, 104a-105a). For example, the Board found that the petitioner denied a request by non-employee representatives of the Ladies Auxiliary of the American Legion and the Veterans of Foreign Wars to sell Buddy Poppies at the guard houses (within the confines of its property), and that petitioner suggested to them that employees undertake that task (R. 104a-105a).

When a non-employee representative of the UAW-CIO wrote the Company in January, 1953, and requested permission to "distribute Union literature on Company property," the petitioner denied it that permission, referring specifically to its "long standing policy" as being "to restrict distribution of literature of any sort to Company representatives and employees of the plant" (G. C. Ex. 4; R. 16a, 105a-106a).

That answer gave rise to the proceedings which are at issue here.

B: The Physical Layout of Petitioner's Property Is Such That Non-Employee Union Organizers Can Make and Have Made Effective Distribution of Union Literature at Petitioner's Main Gates.

Petitioner's Delaware plant is located just inside the city limits of Delaware, Ohio, a city of 12,000 population (R. 24a, 26a, 101a). It is located 1.7 miles from the center of the city. The plant premises are enclosed by a fence and cover some 28 to 30 acres of land (R. 101a-102a). The plant buildings are located on the northern portion of the property, and the general parking lot in which the hourly-

paid employees park is located east of the plant buildings (G. C. Ex. 5, R. 17a).

After parking in the parking lot, employees enter the plant building by passing through either one of two guard house gates located in the front and back of the plant. These guard house gates are necessary for the purpose of identification, as the employees are required to wear identification badges (R. 33a).

It is important to note that all employees must enter the premises from the highway through the so-called West gate (25 feet wide) and may leave either through the West gate or through the East gate (36 feet wide). The two gates are separated by a grass area 30 feet in width (G. C. Ex. 5, R. 17a, 102a).

(1) There Is an Area Thirty Feet in Depth Between the Plant Gates and the Public Highway on Which the Union Organizers May Distribute Union Literature.

The East and West gates through which all employees must pass are located 30 feet south of U. S. Route 42 (G. C. Ex. 5; R. 17a), leaving an area of 30 feet in depth between the highway and the plant gates over which all employees must pass upon entering or leaving the plant property (R. 102a).

The Board found that UAW-CIO organizers (non-employees) distributed Union literature to employees on at least 25 different occasions in the area between the plant gates and the highway (R. 73a-74a, 106a). The Board also found that UAW-CIO organizers (non-employees) at times engaged in the distribution of Union literature as far as 30 feet inside the gates (R. 106a).

(2) Traffic Regulations Enforced by Petitioner and the State Highway Patrol Require That Employees Stop Their Automobiles Before Entering U. S. Route 42 When Leaving the Plant Property.

The record shows, and the Board found, that there are "Stop" signs located 21 feet from the East gate and 15 feet from the West gate in Petitioner's driveways (G. C. Ex. 5; R. 61a, 104a). These "Stop" signs are regular state highway signs and were furnished by the Highway Department. They require that employees leaving the plant property through either the East or West gate come to a stop before entering U. S. Route 42 (R. 61a-62a). The State Highway Patrol polices Route 42 where it passes Petitioner's property and enforces the state law which requires that employees entering the highway from the plant property observe the "Stop" signs (R. 62a, 104a).

The record also discloses that Petitioner made continuous efforts to "get (the employees) to cooperate * * * to come to a full stop before entering Route 42" (R. 62a) and that it had received "pretty good cooperation" (R. 72a). This was affirmed by the Board's finding that only about 10% of the cars failed to stop (R. 104a).

(3) The Traffic Conditions Created by Petitioner's Employees Leaving the Plant Give Non-Employee Organizers Ample Opportunity to Effectively Distribute Union Literature.

The Board found that at shift-change time, traffic jams up between the plant gates and Route 42.² As a result, automobiles stop in the driveway or in the 30-foot area outside Petitioner's property, where non-employee union representatives have distributed Union literature on at least 25 occasions (R. 74a, 106a).

² UAW-CIO organizer, Peters testified that as many as 20 cars would line up in each lane (R. 76a).

C. Effective Distribution of Union Literature Was Made By Employees on Petitioner's Property.

The Board found that a number of Petitioner's employees distributed union literature from time to time without hindrance on Petitioner's premises (R. 104a). The record kept of the employees who distributed literature on Company property is Resp. Ex. 2, which shows that Petitioner's employees distributed union literature on plant property on at least seven (7) different calendar days from March 31, 1953 through June 2, 1953 (R. 65a-66a). Literature was distributed at the guard gates both by employees favoring and by employees opposing the Union (R. 93, 104a).

In addition to distributing Union literature on the plant premises, many of Petitioner's employees further publicized the UAW-CIO's cause by wearing UAW-CIO tee shirts and UAW-CIO badges in the plant during working hours (R. 104a). These tee shirts and badges were supplied by the UAW-CIO and Petitioner freely permitted its employees to wear such badges and tee shirts within the plant.

The Board's findings thus reflect a situation in which the petitioner accorded to all its employees the full measure of their statutory right to self-organization.

II. THE BOARD'S DECISION AND ORDER.

Relying primarily on *NLRB v. Le Tourneau Co.* 324 U. S. 793, the Trial Examiner held that petitioner's refusal to permit *non-employee* union organizers to distribute union literature on its parking lot constituted "an unreasonable impediment to self-organization, and an interference, restraint and coercion of employees rights guaranteed in Section 7 of the Act." (R. 100a-113a and particularly R. 112a.)

Board Members Murdock and Rodgers adopted the Trial Examiner's ruling that petitioner had violated Section 8(a)(1) of the Act (R. 130a-132a). Chairman Farmer and Member Peterson concurred with Members Murdock and Rodgers, but wrote a concurring opinion in which they emphasized that the General Counsel had the burden of proving that the Petitioner's distribution rule made it "impossible or unreasonably difficult for the union to distribute organizational literature to the employees entirely off the employer's premises." (R. 130a-135a.)

Board Member Beeson dissented on the ground that on the facts found by the Board, there was "no serious impediment to the employees' right to secure information." (R. 135a-137a.)

The Board ordered petitioner to cease and desist from prohibiting the distribution of Union literature by union representatives on its parking lot except pursuant to reasonable regulations or controls not of such character as to deny them access to employees for the purpose of effecting such distribution (R. 132a).

III. THE ORDER OF THE COURT BELOW.

The Court of Appeals for the Sixth Circuit enforced the Board's Order without opinion. However, in its judgment, it held that the Board properly applied the principles of decisions in *NLRB v. Monarch Machine Tool Company*, 210 F. (2d) 183, 184-187 (C. A. 6), certiorari denied 347 U. S. 967; *NLRB v. Lake Superior Lumber Co.*, 167 F. (2d) 147, 150 (C. A. 6); *NLRB v. Le Tourneau Company of Georgia*, 324 U. S. 793, 797, 798. (A copy of its judgment is set forth as Appendix A.)

REASONS FOR GRANTING THE WRIT.

1. THE DECISION OF THE COURT BELOW IS IN CONFLICT WITH THE DECISIONS OF THE CIRCUIT COURTS FOR THE TENTH, FIFTH AND NINTH CIRCUITS.

The decision of the Court below conflicts with the decision of the Court of Appeals for the Tenth Circuit in *National Labor Relations Board v. Seamprufe*, 222 F. (2d) 858 (May 5, 1955), the decision of the Court of Appeals for the Fifth Circuit in *National Labor Relations Board v. Babcock & Wilcox*, 222 F. (2d) 316 (May 10, 1955), and the decision of the Court of Appeals for the Ninth Circuit in *National Labor Relations Board v. Monsanto Chemical Company*, _____ F. (2d) _____, 36 LRRM 2506 (July 27, 1955). In all these cases, the Courts refused enforcement of orders virtually identical to that herein on facts very similar (or more favorable to the Board) to those in the instant case.³

(a) The Seamprufe Case.

In *Seamprufe*, as in the instant case, the plant was located on a 25-acre tract of land on the outskirts of a city of 6000 population, and the employees involved rode to and from work in privately owned automobiles which they parked on Company property. The Company permitted its employees to distribute literature on its property, but refused permission to non-employee union organizers to distribute literature in its parking lot.

The Trial Examiner there, as in the instant case, found that it was "virtually impossible" to distribute union

³ The Board has already petitioned for certiorari in the *Babcock & Wilcox* and *Seamprufe* cases (Nos. 250 and 251, respectively, on the October, 1955 Term docket of the Court). In its brief to the Court in Case 250, it seeks certiorari on the basis of conflict with the decision sought herein to be reviewed. (pp. 8-9 of Board's Petition in No. 250.)

literature off company property, and based on the rationale of the *Le Tourneau* case, concluded that Seamprufe's distribution rule constituted an "unreasonable impediment to the freedom of communication essential to the exercise of its employees' right of self organization," and that the Company by enforcing such rule violated Section 8(a)(1) of the Act.

In *Seamprufe*, as in the instant case, the Board adopted the Trial Examiner's findings and conclusions without modification. However, the Circuit Court of Appeals for the Tenth Circuit denied enforcement of the Board's Order.

The Court there found three basic errors in the decision of the Board. The Court concluded:

(1) That the doctrine of the *Le Tourneau* case was not applicable, and that the facts involved brought the case within that part of the decision of the Court of Appeals for the Seventh Circuit in *Marshall Field & Co. v. NLRB* (C. A. 7) 200 F. (2d) 375, "which denied non-employees access to company property in the absence of a showing of restricted accessibility amounting to a handicap."

(2) That the Board had failed to recognize the fundamental distinction between the rights of employees or those who represent them in collective bargaining to enter upon an employer's property, and the rights of non-employee union organizers, who have no relationship whatsoever to either the employees or the employer, to enter upon said property.

(3) That the Board's finding of "inaccessibility" was not justified by the facts. In this connection the Court stated as follows:

"The Board found special circumstances of inaccessibility. But we do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the

entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *N.L.R.B. vs. Lake Superior Lumber Corp.*, *supra*, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization." (Emphasis ours.)

It is important to note that the Court in *Seamprufe* held that although the union organizers could not contact the employees at the entrance or exit to the company's property there was no impediment to union solicitation amounting to a deprivation of the right of self-organization, while in the instant case the Court below sustained the Board's finding of "inaccessibility" even though the non-employee union organizers could and did contact up to 90% of the petitioner's employees on an area immediately outside of its gates on some 25 separate occasions, and even though employee proponents of the Union could and did contact all the employees on the plant property at will.

(b) The Babcock & Wilcox Case.

The facts in *Babcock & Wilcox* were almost identical with those detailed above in the *Seamprufe* case. There again the Board held that the Company's distribution rule was an "unreasonable impediment" to self-organization, and that by enforcing that rule the Company violated Section 8(a) (1) of the Act.

The Court of Appeals for the Fifth Circuit denied enforcement of the Board's Order. In denying enforcement the Fifth Circuit held, as did the Tenth Circuit in *Seam-*

pruse, that there was a fundamental distinction between the rights accorded under the Act to employees and to non-employees who may seek to represent them; and that the *Marshall Field* case and not the *Le Tourneau* case was dispositive of the issue involved.

(c) The Monsanto Chemical Company Case.

In *Monsanto Chemical Co.*, the situation was almost parallel to that in *Seampruse* and *Babcock & Wilcox*. There the Court of Appeals for the Tenth Circuit reviewed carefully the pertinent decisions of this Court and the various Circuit Courts, and for the reasons given by the Courts of Appeals for the Tenth and Fifth Circuits in *Seampruse* and *Babcock & Wilcox* denied enforcement of the Board's Order. It specifically distinguished the *Le Tourneau*, *Lake Superior Lumber*, and *Monarch Machine Tool* decisions relied upon by the Court below in the instant case.

2. THE DECISION BELOW INVOLVES AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, DECIDED BY THIS COURT.

The decision below presents an issue of law which is important in the administration of the National Labor Relations Act. The frequency with which this question has arisen is demonstrated by the number of recently-decided cases relating to this issue. (See page 9, *supra*.)

In its Petition for Certiorari to this Court in No. 250 of the current docket (*NLRB v. Babcock & Wilcox*), the Board itself urges the point here made by petitioner (pages 13-14 of the Board's Petition in No. 250).

The question here presented is therefore one of federal law which has not been, but should be, settled by this Court.

3. THE COURT BELOW DECIDED THE CASE ERRONEOUSLY BY RELYING ON DECISIONS NOT APPLICABLE TO THE FACTS IN THIS RECORD.

We do not have the benefit of any written opinion by the Court below. However, its judgment entry shows that it relied solely on *NLRB v. Le Tourneau Co. of Georgia*, 324 U. S. 793, *NLRB v. Lake Superior Lumber Co.*, 167 F. (2d) 147, and *NLRB v. Monarch Machine Tool Co.*, 210 F. (2d) 183. The foundation for its decision was an erroneous one and its decision therefore wrong.

(a) The Le Tourneau Decision Is Not Applicable.

In *Le Tourneau*, the Board itself had stated the issue as follows:

" * * the sole question confronting us is whether, under the circumstances of the instant case, to the extent that the rule prohibits distribution of Union literature by employees on parking lots, it constitutes such a serious impediment * * * that the rule gives way." (54 NLRB 1253, at 1260.) (Emphasis ours.)*

The Board thereupon found that the suspension of two employees for violating the rule was violative of the Act.

Mr. Justice Reed, who wrote the opinion in *Le Tourneau*, later stated with reference to it that:

"It has never been held that where employees do not live on the premises of their employer a union organizer has to be admitted to those premises. The present situation differs from the employer-controlled areas where employees both live and work in that here union organizers may solicit the employees on the streets or in their homes or at public meeting houses within a few miles of their employment." NLRB v. Stowe Spinning Co., 336 U. S. 226, at 243. (Emphasis ours.)

That this Court's affirmance of the Board order in *Le Tourneau* did not decide the issue here present is clearly shown by the Board's brief to this Court in that case (No. 452, October Term 1944), in which the Board stated:

"The facts in the instant case do not present and the Board did not consider the question which would arise if Union representatives who were not employed at the plant sought to distribute literature on the parking lots." (Page 29, footnote 17 of Board's Brief.)

**(b) The Lake Superior Lumber Decision
Is Clearly Inapposite.**

Lake Superior Lumber involved a lumber camp 18 miles from town. The employees remained at the camp seven days each week. The Company severely restricted visitation rights by Union representatives. Justice Reed's comment about *Le Tourneau*, quoted at page 13, *supra*, shows that a "mill-town" situation cannot be equated with the facts here present.

**(c) The Decision In Monarch Machine Tool Company
Is Not Controlling.**

In *Monarch Machine Tool*, the employer had in effect a blanket prohibition against distribution of literature on its premises by anyone (employees as well as non-employees). The Sixth Circuit there relied primarily on *Le Tourneau*, *supra*, and *Republic Aviation Co.*, 324 U. S. 793, both of which cases deal only with restrictions upon activities by "employees" on the employer's premises (210 F. (2d) 183, 186-187).

As has been shown earlier herein, and as the Board expressly found, employees in the instant case were permitted the full exercise of their right to distribute Union

literature on Company premises, and freely exercised that right.

4. THE DECISION OF THE COURT BELOW VIOLATES THE PETITIONER'S RIGHTS UNDER THE FIFTH AMENDMENT.

As has been shown earlier herein, the effect of the decision below is to accord to non-employee Union representatives rights beyond those granted by the petitioner to other outside solicitors, such as the Women's Auxiliary of the American Legion. The effect of the Court's decision is to require petitioner to grant to these non-employee Union organizers a discriminatory use of its property. Such a ruling violates the Fifth Amendment of the United States Constitution.

Insofar as employees on the premises are concerned—the situation presented in *Le Tourneau*—they are present as invitees. But insofar as non-employees are concerned, the Court's judgment below would convert them from "trespassers" to invitees or permittees, over the objections of the property owner, the petitioner.

The only decision of this Court under the Act which considered a situation even close to that here presented was that of *NLRB v. Stowe Spinning Co.*, 336 U. S. 226 (1949).

In *Stowe Spinning*, a "company-town" situation was involved. The outside Union organizer (Harris), offered to pay the social organization which was permitted use of the employer-owned post office building the usual fee for rental of the building. The rental agreement was made, but the employer (owner of the building) then caused the social organization to rescind the permission—"because Harris was a textile (union) organizer."

In enforcing the Board's order, this Court did so on the limited basis that:

"(The Board) found that the refusal by these respondents was unreasonable because the hall had been given freely to others and because no other halls were available for organization. * * * What the Board found, and *all we are considering here, is discrimination*. The decree should be modified to order respondents to refrain from any activity which would cause a Union's application to be treated on a different basis than those of others similarly situated."

NLRB v. Stowe Spinning Co., 336 U. S. 226, at 233.

That situation is quite the converse of the case here presented. Here, the Board itself has found that no discrimination exists. Yet it orders that discrimination be practiced *in favor of the Union* as against organizations such as the American Legion.

As was once stated by Mr. Justice Jackson:

"The essence of our free Government is 'leave to live by no man's leave, underneath the law'—to be governed by those impersonal forces which we call law. * * *

Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give up."

Youngstown Sheet & Tube Co. v. Sawyer, et al.,
(*Steel Seizure case*), 343 U. S. 579, at 654 and 655 (1952).

CONCLUSION.

For the foregoing reasons, it is respectfully submitted
that this petition for certiorari should be granted.

HARRY E. SMOYER,
EUGENE B. SCHWARTZ,
V. JAY EINHART,

970 Union Commerce Building,
Cleveland 14, Ohio,

Attorneys for Petitioner.

September, 1955.

APPENDIX A.

Judgment of the Court of Appeals.

(Filed April 27, 1955.)

This cause came on to be heard on the petition of the National Labor Relations Board for enforcement of its order directing the respondent company to cease and desist from prohibiting the distribution of union literature by union representatives on the company's parking lot, except pursuant to reasonable regulations or control of such character as not to deny them access to the company's employees for the purpose of distributing such literature; and directing the respondent to rescind its plant rule concerning such distribution on its parking lot at its plant in Delaware, Ohio, except pursuant to reasonable regulations of such character as not to deny union representatives access to its employees for the purpose of distributing its literature;

And it appearing, upon a review of the record as a whole, that there is substantial evidence to support the findings of fact of the board;

And it appearing further that, in our judgment, the board properly applied the principles of decisions in the following cases, *N. L. R. B. v. Monarch Machine Tool Company*, 210 F. (2d) 183, 184-187 (C. A. 6), certiorari denied 347 U. S. 967; *N. L. R. B. v. Lake Superior Lumber Co.*, 167 F. (2d) 147, 150 (C. A. 6); *N. L. R. B. v. LeTourneau Company of Georgia*, 324 U. S. 793, 797, 798;

The petition of the labor board for enforcement of its order is granted as prayed by it.

LIBRARY
SUPREME COURT
DEC 2 1955
HAROLD B. WILEY, CLY

In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 422.

RANCO INC.,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

BRIEF FOR PETITIONER, RANCO INC.

HARRY E. SMOYER,
EUGENE B. SCHWARTZ,
V. JAY EINHART,

Union Commerce Bldg.,
Cleveland, Ohio,

Counsel for Petitioner.

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In the Supreme Court of the United States

OCTOBER TERM, 1955.

No. 422.

RANCO INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT,

BRIEF FOR PETITIONER, RANCO INC.

OPINIONS BELOW.

There was no opinion by the Court below, but its judgment (R. 143) is reported at 222 F. (2d) 543. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 130a-138a) are reported at 109 NLRB 998.

JURISDICTION.

The judgment of the Court below was entered on April 27, 1955 (R. 143). Petition for Rehearing was duly filed and was denied on June 30, 1955 (R. 144). The petition for writ of certiorari, filed on September 26, 1955, was granted on November 14, 1955 (R. 144). The jurisdiction of this Court rests on 28 U. S. C. 1254 and Section 10(e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED.

Where Petitioner is charged only with having denied Union representatives an opportunity to distribute literature on its premises, where Petitioner had a long-standing rule prohibiting distribution of literature on its premises by non-employees (which rule was uniformly enforced as to all types of distributions), where Petitioner freely permitted its employees to distribute literature of all kinds both within the plant and within the confines of its property, where both pro-union and anti-union literature was distributed on its property by its employees, and where there was an area immediately outside the plant gates where non-employee organizers could and did effectively distribute union literature, did Petitioner violate Section 8(a) (1) of the National Labor Relations Act by prohibiting the distribution of literature on its parking lot by non-employee union organizers?

**STATUTE AND CONSTITUTIONAL
PROVISION INVOLVED.**

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*) are set forth in the Appendix *infra*, pp. 37-39, as is the text of the Fifth Amendment to the United States Constitution.

STATEMENT.

I. THE FACTS.¹

A. Background of Petitioner's Rule as to Distribution of Literature on Its Premises.

The petitioner is engaged in the manufacture of thermostatic controls. Its principal offices are located at Columbus, Ohio, where it has three plants. It also operates plants at Delaware, Ohio, and at Plain City, Ohio. The Delaware, Ohio plant is the only one involved in these proceedings (R. 101a, footnote 1).

About November 29, 1950, the petitioner posted at its Delaware plant a rule reading as follows:

"Delaware Plant employees are permitted to distribute literature on Company property, but not on Company time."

(G. C. Ex. 2, R. 14a.)

That notice remained posted in the plant from the date of its first posting and was in effect at the time of the proceedings herein (R. 14a-15a, 56a).

The Board expressly found that pursuant to the rule, the petitioner "uniformly permitted employees to distribute literature at the guard house gates between the plant and the parking lot" and that both "union and anti-union literature has been passed out there by employees without hindrance" from the petitioner (R. 104a).

The Board also found that the petitioner interpreted and applied its rule to restrict the distribution of literature of any sort on its premises to Company employees and representatives (G. C. Ex. 4; R. 16a, 105a-106a). Thus,

¹ Contrary to the usual NLRB order under consideration by the Court, there exists no dispute as to evidentiary facts in this case.

for example, in May, 1953, the petitioner refused a request by non-employee representatives of the American Legion and the Veterans of Foreign Wars to sell Buddy Poppies at the guard house (within the confines of its property) and suggested to those organizations that *employees* undertake that task (Resp. Exs. 1A and 1B; R. 37a, 104a-105a).

The record is completely devoid of any evidence of any unfair labor practices on the part of petitioner. On the contrary, it shows a "clean" background, the various charges previously filed against it having been withdrawn or dismissed by the Board after hearing (R. 98a-99a, 105a, 123a, and 57 NLRB 425).

The nub of this case is the Board's finding that petitioner violated Section 8(a)(1) of the National Labor Relations Act, as amended, by denying to non-employee union organizers the privilege of distributing literature on its parking lot (R. 131a). The circumstances are described in more detail in the following pages of this brief.

B. The Physical Layout of the Plant Permits Non-Employee Union Organizers to Make Effective Distribution of Union Literature, and They Have Frequently Done So.

Petitioner's Delaware Plant is located just inside the city limits of Delaware, Ohio, a city of 12,000 population (R. 101a). It is located 1.7 miles from the center of the city. The plant premises are enclosed by a fence and cover some 28 to 30 acres of land (R. 101a-102a). The plant buildings are located on the northerly portion of the property, and the parking lot in which the hourly-paid employees park is located east of the plant buildings (G. C. Ex. 5, R. 17a).

After parking in the parking lot, employees enter the plant buildings by passing through either one of two guard house gates located in the front and back of the plant. These guard house gates are necessary for the purpose of identification, as the employees are required to wear identification badges (R. 102a).

All employees must enter the fenced premises from the highway fronting petitioner's land (U. S. Route 42) through the so-called West gate (25 feet wide) and may leave either through the West gate or the East gate (36 feet wide). The two gates are separated by a broad grass area (G. C. Ex. 5, R. 17a, 102a).

- (1) **There Is a Thirty-Foot Public Area Between the Plant Gates and the Highway in Which Non-Employee Union Organizers May Distribute Literature, and They Have Frequently Done So.**

The East and West gates through which all employees must enter the plant are located 30 feet south of the highway. This creates a public area 30 feet in depth over which all employees must pass.

The Board found that non-employee Union organizers distributed Union literature to petitioner's employees on at least 25 different occasions in the public area between the highway and the gates (R. 73a-74a, 106a).

- (2) **Traffic Regulations Enforced by Petitioner and by the State Highway Patrol Require That Employees Stop Their Cars in the Driveway Prior to Entering U. S. Route 42.**

The Board found that official State Highway "Stop" signs are posted at the exits from petitioner's property (G. C. Ex. 5; R. 61a, 104a). They require that employees come to a full stop before entering the highway, which is a very heavily-traveled thoroughfare (R. 61a-62a).

The record shows that Route 42 is closely policed by the Ohio Highway Patrol to enforce its "Stop" rules, and the Board so found (R. 62a, 104a).

The record also discloses that petitioner made continuous efforts to "get (the employees) to cooperate * * * to come to a full stop before entering Route 42" (R. 62a) and that it had received "pretty good cooperation" (R. 72a). This was affirmed by the Board's finding that only about 10% of the cars failed to stop (R. 104a).

(3) The Traffic Conditions Created by Petitioner's Employees Leaving the Plant Give Non-Employee Organizers Ample Opportunity to Effectively Distribute Union Literature.

The Board found that at shift-change time, traffic jams up between the plant gates and Route 42.² As a result, automobiles stop in the driveway and in the 30-foot area outside petitioner's property, where non-employee union representatives have distributed Union literature on at least 25 occasions (R. 73a-74a, 106a).

C. Effective Distribution of Union Literature Was Made by Employees on Petitioner's Property.

The Board further found that a number of petitioner's employees distributed union literature on petitioner's premises from time to time without hindrance (R. 104a). A record kept of such distribution showed that employees distributed literature on plant property on at least seven (7) different calendar days from March 31, 1953 through June 2, 1953 (Resp. Ex. 2, R. 38a-40a, 65a-66a). Literature was distributed at the guard gates both by employees favoring and by employees opposing the Union (R. 93a, 104a).

² UAW-CIO organizer Peters testified that as many as 20 cars would line up in each lane (R. 76a).

In addition to distributing Union literature on the plant premises, many of petitioner's employees further publicized the UAW-CIO's cause by wearing UAW-CIO tee shirts and UAW-CIO badges in the plant during working hours (Resp. Ex. 3, R. 41a, 104a). These tee shirts and badges were supplied by the UAW-CIO and petitioner freely permitted its employees to wear such badges and tee shirts within the plant.

D. The Union Representatives Had Still Other Facilities Available for Contact With Employees Who Desired Union Assistance.

The record shows that the Union maintained an office in Delaware, Ohio and that it repeatedly publicized the address and telephone number of its office (G. C. Ex. 6, R. 20; G. C. Ex. 8, R. 35a-36a; Resp. Ex. 5, R. 42a-43a; Resp. Ex. 6, R. 44a-45a; Resp. Ex. 7, R. 46a-47a; Resp. Ex. 8, R. 48a-51a; Resp. Ex. 9, R. 52a-53a).

It also shows that the Union had available to it and used a meeting hall (Eagles' Hall) in Delaware. The capacity of that hall was apparently large enough to accommodate all employees who desired to attend union meetings, and the wives of such employees (Resp. Ex. 7, R. 46a-47a).

II. THE BOARD'S CONCLUSIONS AND ORDER.

Board Members Murdock and Rodgers affirmed the Trial Examiner's recommended order, which was based on the ground that "the burden is upon the employer to show the existence of circumstances warranting the prohibition" of non-employee distributors of literature from the parking lot (R. 130a-131a).

Chairman Farmer and Member Peterson affirmed the order, but on the basis of their finding that the General

Counsel had sustained the affirmative burden of proving that it was "impossible or unreasonably difficult" for non-employee union representatives to distribute organizational literature to the employees entirely off the employer's premises (R. 134a-135a).

Member Beeson dissented on the ground that the facts found by the Board showed no serious impediment to the rights of the employees to secure information (R. 135a-137a).

By a split Board, the following order was issued:

"1. Cease and desist from prohibiting the distribution of union literature by union representatives on its parking lot except pursuant to reasonable regulations or controls not of such character as to deny them access to employees for the purpose of effecting such distribution.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind its plant rule respecting distribution of literature on its premises, insofar as the rule prohibits the distribution of union literature by union representatives on the Respondent's parking lot at the Delaware plant; except pursuant to reasonable regulations or controls not of such character as to deny them access to the employees for the purpose of effecting such distribution."

III. THE DECISION OF THE COURT BELOW.

The Court of Appeals for the Sixth Circuit enforced the Board's Order without opinion. However, in its judgment entry, it held that the Board had properly applied the principles of decisions in *NLRB v. Monarch Machine Tool Company*, 210 F. (2d) 183, 184-187 (C. A. 6) certiorari denied 347 U. S. 967; *NLRB v. Lake Superior Lumber Co.*, 167 F. (2d) 147, 150 (C. A. 6); and *NLRB*

v. Le Tourneau Company of Georgia, 324 U. S. 793, 797, 798.

SUMMARY OF ARGUMENT.

(1) The position of the Board throughout this proceeding (and apparently that of the Court below) was that this Court's decision in *NLRB v. Le Tourneau*, 324 U. S. 793, is dispositive of the issue herein. Such a conclusion is untenable. This Court decided only the issue presented to it in *Le Tourneau* and the Board's decision and that of this Court definitely excluded the question here involved.

(2) Nor can the principle enunciated in *Le Tourneau* be logically or constitutionally extended to affirm the order of the Court below. The explanation of this Court's opinion in *Le Tourneau* subsequently given by Mr. Justice Reed in *NLRB v. Stowe Spinning Co.*, 336 U. S. 226, 243, makes it clear that such an extension would be contrary to the rule of *Le Tourneau* and that it would raise a serious constitutional question under the Fifth Amendment.

(3) The Board's order improperly equates the rights of non-employee union representatives seeking to organize petitioner's employees with those of the employees themselves (for the protection of whose rights to organize or not to organize the Act was passed).

(4) The evidentiary facts found by the Board show that petitioner accorded to its employees the full measure of the rights assured to them by the Act and that they freely exercised those rights. They further show, despite the Board's conclusion to the contrary, that the petitioner's denial of permission to non-employee organizers to distribute union literature on its parking lot did not create any serious impediment to the distribution of union literature to the employees; nor did that denial make it "im-

possible or unreasonably difficult" for the union to distribute literature.

The employees themselves distributed union literature on the premises on at least seven occasions. They freely wore tee-shirts bearing large UAW-CIO insignia within the plant; they wore UAW-CIO buttons within the plant without hindrance from petitioner. And the union maintained an office in Delaware, Ohio and had a large meeting hall in Delaware available to it, at which locations it could discuss the union and its aims with the employees.

Finally, the UAW-CIO non-employee representatives distributed union literature at the 30-foot-wide public area outside the plant gates on about 25 occasions, under traffic conditions which required employees' cars to stop and under which the Board itself found that 90% of the cars did stop (R. 104a).

While the non-employee organizers might have felt that it would be more *convenient* for them to distribute literature under other circumstances, the petitioner "is not required to aid employees to organize" because "the law forbids only interference." *NLRB v. Stowe Spinning Co.*, 336 U. S. 226, at 240-241.

(5) This case involves a narrow charge against the petitioner, involving only enforcement of its rule prohibiting non-employee union representatives "from circulating or distributing among the employees * * * pamphlets, literature and other written and printed material. * * *" (G. C. Ex. 1 C, R. 6a). Nevertheless, the Board's findings and its position in the Court below show that the real basis for its order is based on the theory that denial to non-employee union organizers of the privilege to distribute literature at the petitioner's parking lots did not give such organizers an "opportunity for discussion" with the employees (R.

106a). Petitioner was not charged with any such violation. *A fortiori*, no such violation could be found. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197, 238.

(6) Reversal of the Board's order is required on the basis of the foregoing contentions, without more. Further enforcement of the Board's order in this case would constitute a taking of petitioner's property in violation of the Fifth Amendment.

ARGUMENT.

I. THIS COURT'S DECISION IN *LE TOURNEAU* DID NOT DECIDE THE ISSUE INVOLVED HEREIN. THE QUESTION PRESENTED HERE HAS NEVER BEEN DECIDED BY THIS COURT.

The emphasis laid upon *NLRB v. Le Tourneau Company of Georgia*, 324 U. S. 793, by the Board and by the Court below makes appropriate an analysis of that decision to determine what it did actually decide.

We start with the basic principle that this Court decides only the specific issue presented to it in each case and with the pronouncement that

"However general and loose the language of opinions, the specific situations have controlled opinion."

Hughes v. Superior Court of California, 339 U. S. 460, 465.

What was the issue in *Le Tourneau*? In its decision, the Board stated it in the following terms:

"* * * the sole question confronting us is whether, under the circumstances of the instant case, to the extent that the rule prohibits distribution of Union literature by employees on parking lots, it constitutes such a serious impediment * * * that the right to self-organi-

zation must be held paramount, and the rule give way." (Emphasis ours.)

54 NLRB 1253, 1260.

The Board thereupon found that the *suspension of two employees* for violating the rule was violative of the Act:

When the case finally arrived before this Court, the Board restated the limited scope of its decision as follows:

"The facts in the instant case do not present and the Board did not consider the question which would arise if union representatives who were not employed at the plant sought to distribute literature on the parking lots * * *" *Board Brief in Case 452, October Term, 1944, page 29, footnote 17.*

Nevertheless, and even though the Board had expressly disavowed any consideration in *Le Tourneau* of the question which would arise "if union representatives who were *not employed* at the plant sought to distribute literature on the parking lot," the Board's decision in the instant case describes *Le Tourneau* in broad terms as having decided the issue of the "right to distribute union literature on company automobile parking lots" (R. 107a, 130a-131a).

The Board has thus engrafted onto *Le Tourneau* an extension which was expressly excluded from decision both by the Board and the Court, and the Board thereby seeks to secure enforcement of its order against the petitioner.

II. EXTENSION OF THE LE TOURNEAU DÉCISION TO ENCOMPASS NON-EMPLOYEES IS CONTRARY TO THIS COURT'S DECISION THEREIN.

Mr. Justice Reed was the author of the opinion in *Le Tourneau* and may be fairly assumed to appreciate the full import of this Court's opinion in that case. In the case of *NLRB v. Stowe Spinning Co.*, 336 U. S. 226 (1949), the majority opinion affirmed, with modification, a decision of the Board holding that the employer had violated the Act by requiring that a fraternal organization cancel a rental agreement for use of a Company-owned hall by the union. Pointing out that "What the Board found, and all we are considering here, is discrimination," 336 U. S. 226, 233, the Court ordered the employer to refrain from any activity which would cause a union's application to be treated on a different basis than those of others. Thus, it clearly appears that "discrimination"—and no other theory—formed the basis of this Court's order in *Stowe Spinning Co.*

In his dissent, even on that theory, Mr. Justice Reed discussed *Le Tourneau* in detail. (Chief Justice Vinson joined in the dissent.) He expressly pointed out that the *Le Tourneau* and *Republic Aviation* cases were quite different from the situation in *Stowe Spinning* in that the former cases related to forbidding employees to foster union organization on the employer's premises or in the plant during their non-working time.

Mr. Justice Reed stated that

"It is only when there is a violation through an interference with or a restraining or coercion of employees' rights under Section 7 that an unfair labor practice finding may be predicated upon the employer's acts. The employer is not required to aid employees to organize. The law forbids only interference."

336 U. S. 226, 240-241.

He then discussed the property rights of an employer in the following terms:

"There is nothing in this record that indicates a situation such as exists in employer owned lumber camps or mining properties. Where an employer maintains living, recreation and work places on such business premises open to employees by virtue of their employment, it has been held that exclusion of union organizers from contact with the employees is an unfair labor practice and that the Board's ordering the employer to grant union representatives access in non-working hours to the employees under reasonable regulations is a proper means to effectuate the purpose of the Act. *Labor Board v. Lake Superior Lumber Corp.*, 167 F. (2d) 147. *It has never been held that where the employees do not live on the premises of their employer a union organizer has to be admitted to those premises.*" (Emphasis ours.)

336 U. S. 226, 243.

Mr. Justice Reed noted that there, as in the instant case, the employees were not isolated beyond the hours of employment from union organizers, nor were the organizers denied access to the employees, because they could solicit them on the streets, in their homes or at public meeting houses within a few miles of their employment.

He then stated that

"After an organizer has convinced an employee of the value of union organization, that employee can discuss union relations with his fellow employees during non-working hours in the mill. This gives opportunity for union membership proliferation. *Republic Aviation Corp. v. Labor Board* and *Labor Board v. Le Tourneau Company of Georgia*, 324 U. S. 793."

336 U. S. 226, 243.

Finally, pointing out that *Le Tourneau* dealt with a limitation by the employer upon the right of his employees to solicit union membership on company property during their free time, Mr. Justice Reed stated that this doctrine could not be extended to require the employer to furnish a forum for organizational efforts by outsiders.

It is therefore urged by petitioner here that in the absence of "discrimination," which was the foundation of the majority opinion in *Stowe Spinning Co.*, *supra*, the dissenting opinion of Mr. Justice Reed and Chief Justice Vinson correctly sets forth the principle of law applicable to an employer's right to exclude non-employees from his premises.

A. The Court Below Misconstrued *Le Tourneau* and Thereby Decided This Case Erroneously.

As was shown at page 8, *supra*, the Court below wrote no opinion. However, its judgment entry (R. 143) shows that in affirming the Board's order, it relied on *NLRB v. Le Tourneau Co. of Georgia*, *supra*, *NLRB v. Lake Superior Lumber Co.*, 167 F. (2d) 147, and *NLRB v. Monarch Machine Tool Co.*, 210 F. (2d) 183, cert. den. 347 U. S. 967. An analysis of those authorities discloses their inapplicability to the instant case. As a result, the foundation of the decision of the Court below was erroneous and its decision wrong.

(a) *Le Tourneau* Is Not Applicable.

In view of the discussion hereinbefore on the effect of *Le Tourneau*, no further comment thereon is deemed necessary.

(b) *Lake Superior Lumber Co. Is Clearly Inapposite.*

Lake Superior Lumber Co. involved a lumber camp some 18 miles from the nearest town. The employees remained at the camp seven days per week. The employer had a rule which strictly limited the visiting rights of the union representatives who were the bargaining agents for the employees. Obviously, if the chosen representatives of the employees were unable to confer with the employees whom they represented at their homes (the camp living quarters), the employees' rights under the Act to confer with their union representatives would have become meaningless.

The *Lake Superior Lumber* case presents facts analogous to those in "mill-town" cases, as to which this Court pointed out that a "company-dominated North Carolina milltown" cannot be equated with metropolitan centers where halls are available within easy reach of prospective union members. *NLRB v. Stowe Spinning Co.*, 336 U. S. 226, 230.

The Sixth Circuit carefully pointed out, in affirming the Board's order, that *Lake Superior Lumber Co.* presented a situation in which the employees lived on the property involved and spent their free time on the camp property as a matter of right. 167 F. (2d) 147, 152.

Under those circumstances, the Sixth Circuit held that a non-employee union organizer must be permitted access to an employer's premises where the situation was such that union organization "must proceed on the employer's premises or be seriously handicapped." The difference between that factual situation and that here present is so patent as to require no further discussion. See also *NLRB v. Seamprufe, Inc.*, 222 F. (2d) 858; *NLRB v. Babcock & Wilcox*, 222 F. (2d) 316; *NLRB v. Monsanto Chem-*

ical Co., 225 F. (2d) 16; and *Marshall Field & Co. v. NLRB*, 200 F. (2d) 375.³

(c) *Monarch Machine Tool Co. Does Not Support the Decision Herein of the Court Below.*

Again, in *Monarch Machine Tool Co.*, *supra*, the Sixth Circuit relied primarily on *Le Tourneau*, *supra*, and on *Republic Aviation Corp.*, 324 U. S. 793, both of which dealt only with activities by "employees" on the employer's premises (210 F. (2d) 183, 186-187).

The *Monarch* case involved a situation where the company had in effect a *blanket prohibition* against the distribution of literature by anyone on its premises. The Ninth Circuit recently analyzed the *Monarch* decision in detail and concluded that

"There is reason to assume that the Court treated that as a case involving distribution of literature by *employees* for it cited as authority for its decision the *Le Tourneau* case, *supra*, without any suggestion that the facts presented before the Court were any different than those there involved."

NLRB v. Monsanto Chemical Company, 225 F. (2d) 16, 19.

The foregoing makes it clear that the cases relied on by the Court below were not applicable to the factual situation here presented, and that the Court therefore erred in enforcing the Board's order on the basis of those cases.

³ In *Marshall Field & Co. v. NLRB*, *supra*, the Seventh Circuit upheld that portion of the Board's order requiring the employer to permit non-employee organizers to use a private alleyway separating the two portions of the employer's building. However, this was done only because the privately-owned alleyway "partakes of the nature of a city street." 200 F. (2d) 375, 380. (The Board had found that the alleyway "traverses the center of the (employer's) store at street level. It is open to the public for pedestrian use." *Marshall Field & Co.*, 98 NLRB 88, 93.)

**III THE DECISION OF THE COURT BELOW IMPROPERLY
EQUATES THE RIGHTS OF NON-EMPLOYEE ORGAN-
IZERS WITH THOSE OF EMPLOYEES.**

Section 7 of the Act, *infra*, p. 37, provides that "Em-
ployees shall have the right of self organization, to form,
join or assist labor organizations. * * *"

It is clear that the purpose of Section 7 and Section
8(a) (1), which provides that

"It shall be an unfair labor practice for an employer—
(1) to interfere with, restrain or coerce *employees* in
the exercise of the rights guaranteed in Section 7,"

is to protect the rights of *employees* and not the rights of
strangers who bear no relationship whatsoever to said em-
ployees or to their employer.

The distinction between the rights of employees or
those who represent them in collective bargaining and the
rights of non-employee strangers who do not represent the
employees to come upon the employer's property has long
been recognized by the Courts. For example, in *NLRB v.*
Cities Service Oil Co., 122 F. (2d) 149 (1941), the Court
of Appeals for the Second Circuit held that the employer
therein violated the Act by refusing to permit Union repre-
sentatives who represented certain of its employees, to
come aboard its tanker in order to investigate and nego-
tiate concerning grievances. However, the Court then
stated as follows:

"There can, however, be no reason for giving the repre-
sentatives of the Union passes in order that it may
solicit new members or collect dues. Such activities
were not shown by the Board to have been required
'for the purpose of collective bargaining or other mu-
tual aid or protection' even if they are guaranteed un-
der Section 7 under some circumstances. The rights
guaranteed by Section 7 primarily concern bargaining

as to terms and conditions of employment and not the perpetuation of the tenure of any particular agent.

"Under 2(a) of the order the conditions and the number of passes are to be determined by collective bargaining but at all events the employer should not be required to issue passes except subject to the condition that they will be forfeited if the holder shall use his access either to solicit union membership or to collect dues." (Emphasis ours.)

NLRB v. Cities Service Oil Co., 122 F. (2d) 149, 152.

A similar issue was involved in *Richfield Oil Corp. v. NLRB*, 143 F. (2d) 860 (1944). The Ninth Circuit there held that the employer was required to permit Union officials to board its vessels

"for the purpose of collective bargaining, for the discussion and presentation of grievances, and for other mutual aid and protection of the employees represented by these unions, including the collection of dues and distribution of trade papers to union members, provided, however, that the petitioner is not required to issue passes for the solicitation of membership." (Emphasis ours.)

Richfield Oil Co. v. NLRB, 143 F. (2d) 860, 863.

It is thus apparent that both the Second and Ninth Circuits recognized the right of union representatives to come on the employer's premises for fulfillment of the collective bargaining process where the Union was the collective bargaining representative of employees working and living on the tankers, but even then, they held specifically that the Union representatives had no right to enter upon the tankers for the purpose of soliciting Union membership.

In the instant case, the Board's order requires that petitioner accord to strangers a right which the Courts in

Richfield Oil Co. and *Cities Service Oil Co.* denied even to union representatives who represented certain employees therein, to-wit, the right to enter upon petitioner's premises for the purpose of encouraging union membership.

The Ninth Circuit recently reaffirmed its recognition of the statutory difference between the rights of employees and outside organizers seeking to represent them in *NLRB v. Monsanto Chemical Co.*, 225 F. (2d) 16. The court there said:

"It is to the employees that rights are granted by Section 7. Notwithstanding the section also grants them the right to 'refrain from any or all of such activities,' it may fairly be said that in a situation such as that presented by the *Lake Superior Lumber Corp.* case, *supra*, the employees' rights include the right to have union organizers approach them. But the facts here do not present that kind of case."

NLRB v. Monsanto Chemical Co., 225 F. (2d) 16, 21.

The Tenth Circuit, which decided the *Seamprufe* case, *supra*, had the following to say:

"As we have seen, the fundamental basis for permitting the solicitation of union membership on company property is to vouchsafe the guaranteed right of self-organization * * * *NLRB v. LeTourneau*, *supra*. When conducted by employees the solicitation amounts to the exercise of a right subject only to the correlative right of the employer to maintain plant production and discipline. An employee on Company property exercising the right of self-organization does not violate a company no-trespass rule. * * * But a non-employee labor organizer who comes upon company property in violation of a non-discriminatory no-trespass rule can justify his presence there only insofar as it bears a cogent relationship to the exercise of the employees' guaranteed right of self-organization."

NLRB v. Seamprufe, Inc., 222 F. (2d) 858, 860-861.

And the Seventh Circuit, which decided *Marshall Field & Co. v. NLRB*, 200 F. (2d) 375, stated that:

"The courts have held that Sec. 7 of the Act gives a right to a non-employee to enter and solicit union membership on an employer's premises under two general situations, the first of which is where there has been discrimination. * * *. However, the Board found that discrimination did not exist in the instant case. The second situation is where union organization must proceed upon the employer's premises or be 'seriously handicapped.' An illustration is where a lumber camp is isolated and its very location prevented employees from gaining access to outside contacts. * * *"

Marshall Field & Co. v. NLRB, 200 F. (2d) 375, 379.

The fallacy of equating the rights of employees and those of non-employee organizers becomes apparent upon consideration. As we have pointed out, the Act expressly protects the rights of "employees." This Court has repeatedly held that one can assert only his own rights and not the rights of others. *Jeffrey Mfg. Co. v. Blagg*, 235 U. S. 571, 576; *Virginian Railway v. Federation*, 300 U. S. 515, 558; *Bourjois, Inc. v. Chapman*, 301 U. S. 183, 190. Therefore, where, as in the instant case, the employees have been granted the full exercise of their rights and none are complaining, outside union organizers have no claim of right to enter upon petitioner's property against its will in an attempt to organize the employees.

Thus, although the Board has repeatedly held that an employer rule prohibiting solicitation of membership by employees within the plant during their non-working time is a violation of the Act (for the leading case, see *Peyton Packing Co.*, 49 NLRB 828, 843, quoted by this Court in *Le Tourneau*, 324 U. S. 793), we cannot conceive of even the Board arguing that because employees may solicit

within the plant, that *non-employees* may also enter the plant for such a purpose.

Under the circumstances of this case, the Board's failure to recognize the basic distinction between the rights of employees and outsiders seeking to organize them led it into issuance of an erroneous order.

IV. THE FACTS FOUND BY THE BOARD, AND OTHER UNDISPUTED FACTS IN THE RECORD SUPPORT ONLY THE CONCLUSION THAT IT WAS NOT "IMPOSSIBLE OR UNREASONABLY DIFFICULT" FOR THE UNION TO DISTRIBUTE LITERATURE.

The issue here, as in the Court below, is not one of fact. It is an issue of law based on facts found by the Board and on other undisputed facts appearing in the record.

Under the rule of substantiality "on the record considered as a whole" (Section 10(e) of the Act—*infra*, pages 37-39) and the principles enunciated in *Universal Camera Corp. v. NLRB*, 340 U. S. 474, 490, it is appropriate here to discuss the evidentiary facts, which belie any finding of "impossibility or unreasonable difficulty" (R. 134a).⁴

The Board findings, and other undisputed evidence in the record, show that both *non-employee* organizers and employees were able to and did effectively distribute literature to the employees, despite the restriction imposed

⁴ The burden of proof is upon the Board and does not shift to the employer at any time, *United Packinghouse Workers v. NLRB*, 210 F. (2d) 325, 329, and the Board must prove its charges affirmatively by substantial evidence. *NLRB v. Mc-Smith Garment Co.*, 203 F. (2d) 868; *NLRB v. National Die Casting Co.*, 207 F. (2d) 344. Board Members Murdock and Rodgers erroneously imposed the burden of proof on the petitioner (*supra*, p. 7); Board Members Farmer and Peterson recognized the above rule on burden of proof but arrived at an incorrect conclusion from the evidentiary facts found by them (*supra*, pp. 7-8).

on non-employee union representatives This is shown by the following:

(1) Petitioner freely allowed its employees to distribute literature on its property (G. C. Ex. 2; R. 14a, 104a).

(2) The employees did distribute union literature to employees going to or from the parking lot on at least seven (7) separate days (Resp. Ex. 2, R. 38a-40a, 104a).

(3) The employees were permitted to wear Union badges and tee-shirts within the plant to publicize the Union (R. 104a).

(4) All the employees had to enter or leave the plant through either of two gates 30 feet apart and 25 and 36 feet wide (R. 102a-103a).

(5) An area 30 feet wide, separating the plant fence and the highway, was available for non-employee distributors. It was used by them on twenty-five separate days for the purpose of distribution of literature (R. 102a, 106a; G. C. Ex. 5).

(6) Enforced traffic regulations, and State Highway "Stop" signs, result in 90% of the cars stopping in the 30-foot strip, giving the union organizers ample opportunity to distribute literature (R. 104a).

(7) The traffic jams which result when some 200 cars leave the plant premises in the space of 10 or 15 minutes also cause the employees to stop their cars in the area between the plant gates and Route 42 and gives the non-employee union organizers further opportunity to distribute union literature (R. 103-104a).

(8) Petitioner's plant is located just inside the city limits of Delaware, Ohio, a city of 12,000 population (R. 101a) so that all of the facilities of a city of that size are available to the Union for meetings, including the use of a hall. (R. 46a-47a; Resp. Ex. 7).

In *NLRB v. Seamprufe, supra*, under facts more favorable to the Board than those in the instant case it had found "special circumstances of inaccessibility." Nevertheless, the Tenth Circuit held that:

"We do not think that conclusion is legally justified by the facts. True, the union organizers could not contact the employees at the entrance or exit to the company property, but these circumstances did not insulate the employees from the union organizers. Unlike the employees of a lumber or mining camp who live and work on company property isolated from outside contacts, as in *NLRB v. Lake Superior Lumber Corp., supra*, the employees here lived in or near a small city and were easily accessible to union solicitors. There was no impediment to union solicitation off company property amounting to a deprivation of the right of self-organization."

NLRB v. Seamprufe, Inc., 222 F. (2d) 858, 861.

The above rule was quoted with approval and followed by the Court of Appeals for the Ninth Circuit in *NLRB v. Monsanto Chemical Company*, 225 F. (2d) 16, 21.

Although the Board has placed considerable over-emphasis on the alleged hazards faced by those non-employees who distributed union literature some twenty-five times outside of petitioner's property, it has completely disregarded those facts detailed above which show conclusively that the facilities present in this case permitted effective distribution of such literature by said non-employees outside petitioner's property and by employees on petitioner's property.

The Board has so completely ignored the facilities which make employees available to non-employee organizers outside petitioner's property that it must be assumed that the Board concluded that the adequacy of such

facilities is irrelevant.* This is the same position taken by the Board in *NLRB v. F. W. Woolworth Co.*, 214 F. (2d) 78 (1954), where a no-solicitation rule was involved. In that case the Court of Appeals for the Sixth Circuit stated as follows:

"The Board contends here the adequacy of facilities is irrelevant. But the Supreme Court in *NLRB v. Stowe Spinning Co.*, *supra*, clearly indicates the question is material."

NLRB v. F. W. Woolworth Co., 214 F. (2d) 78, 83.

Because the adequacy of the facilities present for effective distribution of literature is material, and because the evidentiary facts found by the Board show that the facilities present in this case permitted an effective distribution of union literature, notwithstanding petitioner's distribution rule, petitioner submits that it cannot be said on the "record as a whole" that it violated Section 8(a)(1) of the Act by "unreasonably impeding" its employees' rights of self-organization.

V. THE COMPLAINT AGAINST PETITIONER WAS A VERY NARROW ONE. THE BOARD'S DECISION SHOWS THAT THE BASIS FOR ITS DECISION WAS ONE OUTSIDE THE SCOPE OF THE COMPLAINT ON WHICH PETITIONER WAS TRIED.

The Board's finding was as follows:

"1. A majority of the Board finds, in agreement with the Trial Examiner, that the Respondent (petitioner here), by refusing to permit non-employee union organizers to distribute literature on its parking lot, violated Section 8(a)(1) of the Act." (R. 131a)⁵

⁵ The gravamen of the Complaint was that respondent's rule prevented union representatives from "circulating or distributing * * * pamphlets, literature and other written and printed material * * *" (G. C. Ex. 1C, paragraphs 5 and 6; R. 6a). The

The record shows that the Board found no facts other than those found by the Trial Examiner. The separate decisions by Members Farmer and Peterson on one hand and by Members Rodgers and Murdock on the other, both indicate that they regarded "inaccessibility" to be the sole test. (R. 130a-135a.)

In view of the above, "inaccessibility" must appear as the *ratio decidendi*, and nothing else.

We submit that a fair and reasonable evaluation of the whole record and the findings of the Board can lead only to the following conclusion:

It was possible, and it was not unreasonably difficult for union organizers either by themselves or through their union adherents among the employees effectively to distribute all "pamphlets, literature and other written and printed material" which the Union sought to distribute.

Examination of the Board's decision and of its brief in the Court below show that "inaccessibility" was not the real basis for the Board's decision. The real reason for its order is "opportunity for discussion."

Where does this "opportunity for discussion" come from? Certainly not from the Complaint. That seeks relief only as to distribution of "pamphlets, literature and other written and printed matter" (G. C. Ex. 1C; R. 6a). It comes from the Trial Examiner's finding that:

(Continued from preceding page)

charge filed by the Union had alleged that the petitioner had denied the Union the right to distribute literature on the premises "although the employer permitted the distribution of anti-union literature at said location on its premises." (G. C. Ex. 1A; R. 2a-3a, paragraph 1). In other words, the Union's charge had involved discrimination. However, the Complaint by the Board (on which trial was held) deleted all charges of discrimination and the Board affirmatively held that none had been practiced (R. 104a).

"* * * Union International Representative Peters has had the following difficulties in distribution at the gates: Cars sometimes do not stop; when they do there is *no opportunity for discussion* with employees. * * *" (R. 106a.)

In the Court below, the Board's brief was replete with that argument, as shown by the following:

"* * * the statutory guaranty of free self-organization necessarily includes * * * the correlative right of a union, its members and officials * * * *to discuss with and inform the employees about the advantages of self-organization.*"

(Board Brief in Case 12,362, CCA-6, p. 8.)

"Union representatives accordingly cannot distribute literature outside the plant in an *unhurried fashion with an opportunity for discussion*. * * *"

(Board Brief in Case 12,362, CCA-6, pp. 10-11)

"Cars that stop for literature or to ask questions only cause the drivers to become impatient. * * *"

(Board Brief in Case 12,362, CCA-6, p. 11.)

"All those interested in literature would have a chance to receive it and, *more important, would have ample opportunity to discuss any questions with the union representative.* For it is especially in the latter respect that a restriction against union representatives handicaps employees in the exercise of their rights under the Act."

(Board Brief in Case 12,362, CCA-6, pp. 11-12.)

There we have the *real* basis for the Board's decision. The Union's "difficulties" in this case did not relate to distributing "pamphlets, literature and other written and printed material"; its difficulty lay in its inability to induce the employees to come to the Union office or to Union meetings at Eagles' Hall. For those reasons it sought to require the petitioner to supply its representatives with a

forum on petitioner's property whereat they would have an "opportunity to discuss" the union with the employees.

The Board also found that some drivers failed to open their car windows to receive union literature, which it apparently felt increased the Union's "difficulties." But the Act expressly gives to employees:

"the right to refrain from any or all of such activities."

(Section 7, 61 Stat. 136, 29 U. S. C. 151 et seq.)

The Board apparently seeks to impose upon employees who desire to refrain from union activities (as guaranteed to them by the Act), the obligation to permit themselves to be subjected to being "buttonholed" by distributors of union literature. It apparently seeks to require the petitioner to grant to outside union representatives the "opportunity of discussion" with all its employees.

As we have hereinbefore shown, denial of an "opportunity for discussion" was not charged against the petitioner. If the Board had intended to charge the petitioner with a violation in that regard,

"It should have amended its complaint accordingly * * * and introduced proof to sustain the charge."

Consolidated Edison Co. v. NLRB, 305 U. S. 197, 238.

An order of the Board, when enforced, is analogous to an injunction or a restraining order, and may not be issued on a matter not complained of. *Consolidated Edison Co. v. NLRB*, 305 U. S. 197; *Globe Cotton Mills v. NLRB*, 103 F. (2d) 91; *NLRB v. Kanmak Mills, Inc.*, 200 F. (2d) 542.

Certainty of such an injunctive order is important because "violation of the order brings the swift retribution of contempt, without the normal safeguards of a full-dress proceeding." *NLRB v. Stowe Spinning Co.*, 336 U. S. 226, 233.

From the foregoing discussion, petitioner contends that it clearly appears that the actual *ratio decidendi* was lack of "opportunity for discussion"; that petitioner was not charged with any such violation; that petitioner is under no legal obligation to supply such an opportunity in any event;⁶ and that for this reason alone the Board's order should not have been enforced by the Court below.

VI. ENFORCEMENT OF THE BOARD'S ORDER IN THIS CASE WOULD CONSTITUTE A TAKING OF PETITIONER'S PROPERTY IN VIOLATION OF THE FIFTH AMENDMENT.

The petitioner contends that the points hereinbefore discussed require reversal of the Board's order on the basis of decisional principles. Further, enforcement of the Board's order in this case would constitute a taking of petitioner's property in violation of the Fifth Amendment.

The constitutionality of the National Labor Relations Act was sustained by this Court under the "commerce" clause of the Constitution. *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937); *Polish National Alliance v. NLRB*, 322 U. S. 643 (1944).

However, this Court held at an early date as follows:

"But like the other powers granted to Congress by the Constitution, the power to regulate commerce is sub-

⁶ In effect, the Board's order would reinstate a form of its now discredited *Bonwit-Teller* doctrine by requiring petitioner to grant to the union use of its premises (but not of the plant itself) in order to make a forum for discussion available to the Union.

The doctrine was first established in *Clark Bros. Inc.*, 70 NLRB 802, (1947), affirmed in 163 F. (2d) 373. The Labor-Management Relations Act of 1947 was found to have been intended to change the rule of the *Clark* case in *Sabcock & Wilcox*, 77 NLRB 577 (1948). The Board revived the doctrine in a modified form in *Bonwit-Teller*, 96 NLRB 608 (1951), but finally bowed to the will of Congress and discarded the principle in *Livingston Shirt Corp.*, 107 NLRB 400 (1953).

ject to all the limitations imposed by such instrument, and among them is that of the Fifth Amendment * * *. Congress has supreme control over the regulation of commerce, but if in exercising that supreme control, it deems it necessary to take private property, then it must proceed subject to the limitations imposed by this Fifth Amendment, and can take only on payment of just compensation." (Emphasis ours.)

Monongahela Navigation Co. v. U. S., 148 U. S. 312, 336 (1893).

See also *Railroad Retirement Board v. Alton Railroad Co.*, 295 U. S. 330 (1934).

So it is in the instant case. The Board's order constitutes a taking of petitioner's property by the government for the private use of outside union organizers.

Petitioner recognizes that under certain circumstances the courts have held that:

"It is not every interference with property rights that is within the Fifth Amendment. * * * Inconvenience or even some dislocation of property rights may be necessary in order to safeguard the right to collective bargaining." 324 U. S. at 802.

Without accepting as sound the theory of dislocation of property rights secured by the Fifth Amendment, petitioner believes that it is not necessary to challenge the theory to secure reversal of the Board's order in this case. *Arguendo*, that it could constitutionally do so, Congress has at no time evidenced any intention of destroying property rights secured by the Fifth Amendment in favor of protecting employees' rights under the Act. And most certainly if the "dislocation" rule (invented by the Board, and not by Congress) is to have any validity, a very strong case would have to be found before it could apply. Indeed, every effort should be made by a court to avoid its application.

The facts in the instant case show that application of the rule here would go far beyond those cases in which it has been employed in the past, as is shown by the following discussion.

The "dislocation" rule was first approved by the Court of Appeals for the Second Circuit in *NLRB v. Cities Service Oil Co.*, 122 F. (2d) 149. There the employer refused to permit Union representatives *who represented some of its employees* to come aboard its tanker where the employees *worked and lived* in order to investigate and negotiate concerning grievances.

That the Second Circuit would not have applied its "dislocation" rule in the instant case is clearly shown by its statement in that case that:

"There can, however, be no reason for giving the representatives of the Union passes in order that it may solicit new members or collect dues. Such activities were not shown by the Board to have been required 'for the purpose of collective bargaining or other mutual aid or protection' even if they are guaranteed under Section 7 under some circumstances." 122 F. (2d) 149, 152.

Therefore, it is clear that the Second Circuit in the *Cities Service* case refused to permit that type of activity which the Board ordered petitioner to permit in the instant case.

In *NLRB v. Le Tourneau*, *supra*, this Court in a footnote quoted the "dislocation" rule enunciated by the Second Circuit in *Cities Service* with apparent approval. There this Court held that some dislocation of the employer's property rights was necessary in order that its employees might be permitted to distribute union literature on company property during their non-working hours.

However, as was earlier pointed out, the rationale of *Le Tourneau* is not applicable in the instant case, because petitioner permits its employees to distribute literature on its property during their non-working time.

The Court of Appeals for the Sixth Circuit applied the "dislocation" rule in *NLRB v. Lake Superior Lumber Corp.*, 167 F. (2d) 147 (1948), and held that the employer there violated the Act by refusing to permit union organizers, who were the bargaining agents for its employees, access to its lumber camp which was situated some 18 miles from the nearest town.

The *Lake Superior Lumber* case was comparable to the *Cities Service* case in that the employees lived and worked on their employer's property. Compare the decision of the Sixth Circuit in *NLRB v. West Kentucky Coal Co.*, 116 F. (2d) 816, in which the Court affirmed a Board order which prevented the employer

"from denying to its employees who reside in houses owned by the (employer) the right to have any persons call at their homes for the purpose of consulting, conferring or advising with, talking to, meeting or assisting, the (employer's) employees or any of them in regard to the rights of said employees under the Act to self-organization."

West Kentucky Coal Co., 10 NLRB 88, 133.

The most recent case in which this Court had occasion to apply the "dislocation" rule was *NLRB v. Stowe Spinning Co.*, *supra*. But it was only on the basis of the fact that

"What the Board had found, and all we are considering here, is discrimination." 336 U. S. 226, 233.

that this Court held that "inconvenience or some dislocation of property rights" was justified.

The rationale of the decisions in cases such as *Cities Service Oil Co. supra*, *Le Tourneau, supra*, *Stowe Spinning, supra*, and *Lake Superior Lumber Co., supra*, is but a logical extension of cases previously decided by this Court.

In *Marsh v. Alabama*, 326 U. S. 501, this Court held invalid an application of a state law of trespass when applied to the distribution of literature in a company-town. Obviously, the ownership of the town by an employer would have entirely vitiated all right of communication or assembly if the usual trespass rules were applicable. The case may therefore be taken as holding only that "the public has the same rights of discussion on the sidewalks of company towns that it has on the sidewalks of municipalities." *NLRB v. Stowe Spinning Co.*, 336 U. S. 226, 242. And compare *Thomas v. Collins*, 323 U. S. 516 and *Hague v. C. I. O.*, 307 U. S. 496.

The cases discussed above show that the Courts have found it necessary to apply the "dislocation" rule in order to safeguard the rights granted employees under the Act only in the following specific situations:

1. Where union organization could not proceed outside company property because the employees worked and lived in "company towns," "lumber camps" or on tankers, so that they were inaccessible to outside union organizers. *NLRB v. Lake Superior Lumber Co.*, 167 F. (2d) 147; *NLRB v. Cities Service Oil Co.*, 122 F. (2d) 149.

2. Where employees were prohibited from distributing literature during non-working hours on their employer's property. *NLRB v. Le Tourneau*, 324 U. S. 793, and

3. Where the employer enforced his rules in such a manner as to "discriminate" against outside Union organizers. *NLRB v. Stowe Spinning Co.*, 336 U. S. 226.

How different those situations are from that here present! Here the Board found that no discrimination existed; no employees had been discharged for union activity; the employer's background was completely "clean"; the employees were easily accessible to non-employee organizers outside of company property and the Board made no finding (and it could not) that the petitioner's rule was motivated by anti-union bias.

The circumstances of this case call into play with even greater effect the statement by Mr. Justice Reed that further extension of the *Le Tourneau* rule "raises serious problems under the Fifth Amendment." 336 U. S. 226, 244.

Rights of employees are not more sacred than the rights of employers. In recent years, emphasis has been placed on certain rights of free speech, freedom of the press, freedom of religion, etc., but none of these has any greater force or higher sanction than the rights of private property.

Enforcement of the order of the Board in this case would require petitioner to throw open its property to non-employee union organizers in order that they might distribute union literature thereon, although effective distribution of such literature can be made and was made by non-employees outside petitioner's property, and by employees on petitioner's property.

Nowhere in the Act do we find any such requirement. Nowhere in its legislative history do we find any suggestion that Congress intended any such result. Definite legislative language only would authorize such a construction of the Act. *U. S. v. C. I. O.*, 335 U. S. 106, 120-121.

Under the circumstances of this case, it is clear that enforcement of the Board's order herein would result in a taking of petitioner's property although no factual situation exists (such as hereinbefore discussed) which makes

such action necessary to safeguard the employees' rights under the Act. Therefore, enforcement of the Board's order would violate petitioner's rights under the Fifth Amendment to the United States Constitution. As was once stated by Mr. Justice Jackson:

"The essence of our free Government is 'leave to live by no man's leave, underneath the law'—to be governed by those impersonal forces which we call law.

Such institutions may be destined to pass away. But it is the duty of the Court to be last, not first, to give them up." *Youngstown Sheet & Tube Co. v. Sawyer, et al.* (Steel Seizure case), 343 U. S. 579, 654-655 (1952).

CONCLUSION.

Petitioner recognizes that law is built up over a period of years by decisions in specific situations as they arise from time to time. The constitutionality of the framework of the Act, once so seriously questioned, is now accepted.

However, we now find a situation where step by step, the Board, with approval of some of the courts, seeks to arrive at a goal which would encroach on rights which it has no statutory or constitutional authority to invade. The paragraphs below show how the present stage was reached.

The protection of an employee's right to engage in union activity on company property, but on his own time, came first. *Peyton Packing Co.*, 49 NLRB 828, 843. From that arose the requirement that under the circumstances there present, an employer be required to permit his employees to distribute union literature on his parking lot during their free time. *Le Tourneau, supra.*

Then arose the line of decisions that where an employee worked and lived on the employer's premises, he

was entitled to confer at his home with the union representatives. *Cities Service Oil Co., supra, Richfield Oil Co., supra, Lake Superior Lumber Co., supra*, and the theory that where an employer "discriminated" in the use of his property (majority decision in *Stowe Spinning Co.*); or interfered with the use of his property on the basis of anti-union bias after its use had been granted to a fraternal agency (Mr. Justice Jackson's opinion in *Stowe Spinning*), such conduct violated the Act.

The basic principles underlying the foregoing decisions can be rationalized and understood. But when the Board seeks to extend those decisions even further to seize the petitioner's property in order to require it to *discriminate in favor of a union* (as against organizations such as the American Legion), and without express statutory authority, the time has come to call the Board to a halt.

For the reasons stated, the judgment of the court below should be reversed and remanded to the court below with directions to set aside the order of the Board.

Respectfully submitted,

HARRY E. SMOYER,

EUGENE B. SCHWARTZ,

V. J. EINHART,

Attorneys for Petitioner.

December, 1955.

APPENDIX.

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, et seq.), are as follows:

RIGHTS OF EMPLOYEES.

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

UNFAIR LABOR PRACTICES.

"Sec. 8(a). It shall be an unfair labor practice for an employer—

(1). to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7";

PREVENTION OF UNFAIR LABOR PRACTICES.

"Sec. 10(e). The Board shall have power to petition any United States court of appeals (including the United States Court of Appeals for the District of Columbia), or if all the United States courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for

appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its origi-

nal order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in its sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 349)."

The Fifth Amendment to the United States Constitution provides as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

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State of New York

IN SENATE

January 1, 1956

REPORT OF THE COMMISSIONER OF THE DEPARTMENT OF SOCIAL SERVICES

ON THE ADMINISTRATION OF THE DEPARTMENT OF SOCIAL SERVICES

FOR THE YEAR 1955

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 422

RANCO INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Solicitor General files this memorandum on behalf of the National Labor Relations Board.

The question presented is whether an employer violates Section 8 (a) (1) of the National Labor Relations Act, as amended, by prohibiting non-employee organizers from distributing union literature on his plant parking lot during the employees' free time, where the Board finds that it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant. Although we be-

lieve that the decision of the court below is correct in upholding the Board's determination that petitioner's prohibition against the distribution of union literature by nonemployee organizers on the plant parking lot constituted a violation of Section 8 (a) (1), the decision, as petitioner states, is in conflict with the decision of the Fifth Circuit in *National Labor Relations Board v. Babcock & Wilcox*, 222 F. 2d 310, and that of the Tenth Circuit in *National Labor Relations Board v. Seamprufe, Inc.*, 222 F. 2d 858. Because of the conflict and the importance of the question in the administration of the Act, the Government has filed petitions for certiorari to review the decisions of the Fifth and Tenth Circuits in the cited cases, Nos. 250 and 251, respectively, this Term.

It would, in our view, be appropriate for this Court in resolving the conflict to review both the instant decision and the cited decisions of the Fifth and Tenth Circuits. For the foregoing reasons, the Government does not oppose the granting of a writ of certiorari in this case.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1955.

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No. 153

In the Supreme Court of the United States

October Term, 1955

ELMER L. HARRIS, Petitioner

NATIONAL LABOR EDUCATION BOARD, Respondent

ON WRIT OF HABEAS CORPUS TO REMOVE FROM OFFICE OF THE BOARD OF NATIONAL LABOR EDUCATION

ELMER L. HARRIS, Petitioner

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

JOHN A. HARRIS, Respondent

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 422.

RANCO, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

*ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SIXTH CIRCUIT*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The judgment of the court below (R. 143), affirming the Board's order without opinion, is reported at 222 F. 2d 543. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 100a, 130a-138a) are reported at 109 NLRB 998.

JURISDICTION

The judgment of the court below was entered on April 27, 1955 (R. 143). The petition for a writ of certiorari was filed on September 26, 1955, and granted on November 14, 1955 (R. 144). The

jurisdiction of this Court rests on 28 U. S. C. 1254 and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTION PRESENTED

Whether an employer violates Section 8 (a) (1) of the National Labor Relations Act by prohibiting nonemployee union organizers from distributing union literature on his plant parking lot during the employees' free time, where it is unreasonably difficult for the union to reach the employees off company property in the immediate vicinity of the plant.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are set forth in the Appendix to the Board's brief in the companion case of *National Labor Relations Board v. Babcock and Wilcox*, pp. 48-50, No. 250, this Term.

STATEMENT

1. *The facts*—The Board found that petitioner had violated Section 8 (a) (1) of the Act by prohibiting nonemployee union organizers from distributing union literature on its parking lot during the employees' nonworking time. The facts upon which this finding rests are substantially undisputed and may be summarized as follows:

A. PETITIONER'S NO-DISTRIBUTION RULE

Petitioner, an Ohio corporation with five Ohio plants and principal offices at Columbus, manufactures thermostatic controls for refrigerators, automobiles, and other equipment at its plant in Delaware, Ohio, the only plant involved in this proceeding (R. 101a-102a; 5a, 8a). Upon beginning a campaign to organize petitioner's approximately 900 employees in January 1953, the UAW-CIO (herein called the Union) sought permission to distribute union literature on a company parking lot on the ground that a "dangerous traffic hazard" existed outside the plant gates, thus preventing any reasonably effective distribution of literature off the Company's premises (R. 105a, 130a, 15a). Petitioner replied as follows (R. 105a-106a, 55a, 16a):

"For your information, the long-standing policy of this company, which has also been in effect during previous organizing campaigns, is to restrict distribution of literature of any sort on Company premises to Company representatives and employees of the plant. Your request is therefore denied."

Citing this rule as justification, petitioner has also denied permission to nonemployee representatives of veterans' organizations to sell Buddy poppies on company property (R. 103a-107a). However, petitioner has permitted employees to distribute freely both union and anti-union lit-

erature on company property during their non-working time, and has itself distributed anti-union literature (R. 104a; 65a, 83a-84a, 19a-36a).

B. CONDITIONS IMPEDING EFFECTIVE DISTRIBUTION OUTSIDE THE GATES TO COMPANY PROPERTY

Petitioner's premises occupy about 30 acres in the outskirts of Delaware, Ohio (population 12,200), and are entirely surrounded by a fence (R. 101a-102a; 17a). The only two gates open on adjacent U. S. Highway 42, a two-lane, heavily traveled interurban thoroughfare running roughly east and west (R. 102a; 61a, 17a). A 30-foot strip of public property lies between the gates and the highway (R. 102a; 17a). Both gates are double lane, but the east gate (36 feet wide) is only an exit while the west gate (25 feet wide) serves as both an entrance and an exit (R. 103a; 75a-76a). Petitioner maintains an employee parking lot which is within the gates but separated from the plant and office area by another fence (R. 102a; 17a). Since the entrances to this area are flanked by guard houses where persons desiring admission must pass inspection, access to the parking lot does not insure access to the working areas (R. 102a; 59a).

About a third of petitioner's employees reside in Delaware; the rest live from 5 to 25 miles from

the plant (R. 102a-103a). Although there were about 900 employees when the Union drive began, the plant normally employs about 700 and the work force numbered only 598 at the time of the hearing in October 1953 (R. 101a-102a). A survey made by petitioner disclosed that of this 598, 220 lived in Delaware (about 1.7 miles from the plant), 335 lived within 5 miles of the plant, 25 lived within 10 miles, 123 within 15 miles, 97 within 20 miles, 16 within 25, and one lived over 25 miles from the plant (R. 101a-102a). Practically all of them come to work in private automobiles, for, other than taxicabs, there is no public transportation in Delaware (R. 102a). Coming into petitioner's premises, cars approach from both directions on Highway 42 as well as from Curtis Street, a road to Delaware which joins Highway 42 opposite the plant (R. 103a; 17a). Upon leaving the premises, cars exit by either gate, turn east or west on Highway 42, or cross the highway to enter Curtis Street (R. 103a; 62a, 63a, 77a). There are stop signs inside the gates which warn employees to stop before entering the highway, but about 10 percent of the employees ignore the signs in their hurry to get home (R. 104a; 62a, 63a, 77a-78a). Approximately 14 cars per minute pass the gates—at the east gate in a double lane, so that it requires about 15 minutes to clear the parking lot at the close of the first shift and

5 to 10 minutes at the end of the second (R. 103a).¹ Although shift changes cause a traffic jam on Highway 42 outside the plant, there is no traffic light and apparently no regular or systematic police direction (R. 104a; 70a, 62a, 63a).

After being denied permission to distribute union literature on the parking lot (R. 58a-59a), union representatives on some 25 occasions attempted distribution between the lanes of traffic outside each gate at change of shift (R. 106a; 73a-75a, 78a-79a).² Their success was variable. Although at times in good weather petitioner's vice president observed 100 percent distribution to those car occupants who indicated they desired literature (R. 106a; 63a).³ Union representatives have encountered the following difficulties (R. 106a; 75a-83a): Some cars do not stop (R. 78a). If they do, there is no opportunity for the employees to ask questions because the drivers behind become impatient, honk their horns, bump into the cars ahead, and exhort the distributor to

¹ The plant operates on a 3-shift basis (R. 103a). A survey made by petitioner on September 24, 1953, revealed 401 employees working the first shift, 181 the second, and 13 the third (R. 103a). That same day respondent counted roughly half as many cars on the parking lot as employees at work during each shift (R. 103a).

² On occasion the union representatives stood as much as 30 feet inside the gates, but petitioner's vice president, Opp, tried to prevent this encroachment whenever he observed it (R. 106a).

³ The representatives give literature only to those who indicate they wish it by extending an arm from the car or otherwise (R. 106a, n. 2).

get out of the way (R. 77a-78a). Sometimes the passengers desire literature, but the driver will not stop (R. 80a). In inclement weather, and in the winter, car windows are generally closed and acceptances fall substantially (R. 78a). Standing in the 3-foot space between the lanes of moving cars, the distributor is a traffic hazard and assumes the risk of injury, particularly at night (R. 75a-76a, 82a). Also at night the distributor, blinded by headlights, has difficulty ascertaining how many people are in the cars (R. 82a). At the west gate, with its incoming and outgoing lanes, distribution to incoming cars creates an additional hazard. Because of the heavy traffic on Highway 42, cars approaching the plant must stop, and sometimes line up, to wait for a chance to get across (R. 79a-80a). If an incoming car stops for literature, cars crossing behind it block the oncoming traffic on Highway 42 (R. 79a-80a). Although the speed limit on Highway 42 is 35 miles per hour, many cars go 50 miles per hour or more (R. 81a, 61a-62a).

2. *The Board's conclusions and order*—Upon the foregoing facts and the entire record, the Board, with one member dissenting, found that it was unreasonably difficult for the Union representatives to distribute literature to respondent's employees in the vicinity of the plant entirely off company property, and that the prohibition against distribution by nonemployees, under the circumstances of this case, was an un-

reasonable impediment to the employees' right to receive information about unionism, and hence violative of Section 8 (a) (1) of the Act (R. 107a-113a, 130a-131a, 134a-137a). The Board accordingly ordered petitioner to cease and desist from prohibiting the distribution of union literature by union representatives on its parking lot, to rescind its rule to this extent, and to post an appropriate notice (R. 132a-133a).

3. *The judgment of the court below*—The court below, being of the view that the Board had properly applied the principles established by *National Labor Relations Board v. LeTourneau Company of Georgia*, 324 U. S. 793, and other cases, enforced the Board's order (R. 143).

ARGUMENT

The question presented here is substantially the same as that in the companion cases with which this one is to be heard, *National Labor Relations Board v. The Babcock and Wilcox Company*, No. 250, and *National Labor Relations Board v. Seamprufe, Inc.*, No. 251. For the most part, our answers to petitioner's arguments are set forth in our brief in No. 250, to which the Court is respectfully referred. We add only a discussion of petitioner's contention (Br. 22-25) that in this case the union representatives could and did distribute literature at the plant gates; that the employees themselves were permitted to distribute literature on the plant premises;

and that hence the record does not support the finding of the Board, approved by the court below, that it was unreasonably difficult for the union representatives to distribute literature to the employees off the company's premises.

We think the undisputed facts reviewed in our Statement defeat this line of argument. Here, as in the companion cases, the employees live in and around the nearest town within a radius of five to twenty-five miles from the plant (*supra*, pp. 4-5). In our brief in No. 250 (pp. 39-42), we have already described the difficulties which union representatives face in reaching employees whose homes are thus widely scattered. The adequacy of communication between the union organizers and the employees at the plant gates, which petitioner emphasizes, is more imaginary than real. Practically all of petitioner's employees live beyond walking distance from the plant, and there is no public transportation other than taxicabs. Virtually all of the employees arrive at the plant by private car and are driven directly onto Company property. Although a 30-foot strip of public property lies between the plant gates and Highway 42, the traffic conditions at change-of-shift time make distribution there hazardous at best and possibly dangerous at night or in inclement weather. Even though many of the cars obey the stop sign before entering Highway 42, drivers in a hurry to get home and intent on observing traf-

fic-jam conditions on a busy main thoroughfare are unlikely to be in any position or mood to pay attention to the distributor, who thus becomes a traffic hazard himself. Cars that stop for literature or to ask questions only cause the drivers behind to become impatient, honk their horns, bump the cars ahead, and exhort the distributor to get out of the way (R. 287a-288a; 67a-68a). Passengers who wish to stop are at the mercy of drivers who may not, and both are reluctant to open car windows in winter or bad weather. At such times, attempts at distribution are therefore particularly ineffective (R. 287a-288a; 71a, 69a). In these circumstances, the trial examiner (R. 111a), with the subsequent approval of the Board and the court below (R. 131a, 134a, 143a), could appropriately conclude that the distribution of union literature at the plant gates

* * * is highly impracticable. At best it is hazardous; in twilight and inclement weather it could be dangerous. The busy entrance to a busy main highway seems neither a safe nor a practicable location for the distribution of literature to the occupants of passing automobiles. This is so even though the vehicles may, as required, stop before entering the highway. The driver intent on observing traffic conditions is not likely to be in the position or mood to give his full attention to the distributor, who thus becomes a traffic hazard himself.

That union representatives did distribute outside the entrance gates on some 25 occasions between January and October seems no more suggestive of the adequacy of that technique than it is of the hardness of the distributors and the ineffectiveness of other available modes of communication.

The Board's finding in this respect is not, as petitioner asserts, weakened by the circumstance that petitioner permits employees to distribute union literature on its property and that they have in fact done so. At best it is a fortuitous thing whether employees may wish to undertake distribution of union literature. Moreover, and more important, although fellow employees may pinch-hit to distribute literature, the employees generally are nevertheless deprived of ready access to the union representatives. And as we have indicated in our brief in No. 250 (pp. 29-30), these representatives are, by virtue of their training and background, full-time specialist practitioners constituting the employees' best source of information about unionism.

In short, this case cannot be distinguished from the companion cases. As in those cases, the facts here clearly justified the Board's finding that it was unreasonably difficult for union representatives to reach the employees outside of company property in the immediate vicinity of the plant. For the reasons stated in our brief in No. 250, this circumstance, balanced against

considerations of the employer's convenience and property interests, warranted the Board's order against petitioner's rule forbidding distribution on its parking lot. Accordingly, we believe that the decision below, sustaining the Board, should be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,

DAVID P. FINDLING,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,
National Labor Relations Board.

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